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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~347.~~ 1320

ALFRED H. CLEMENTS, APPELLANT,

vs.

JOSEPH P. MACHEBOEUF, A. J. WILLIAMS, ET AL.

APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF COLORADO

FILED DECEMBER 3, 1874.

Supr. of Colorado
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1876
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SUPREME COURT OF THE UNITED STATES.

No. 347.

ALFRED H. CLEMENTS, APPELLANT,

vs.

JOSEPH P. MACHEBOEUF, A. J. WILLIAMS, ET AL.

APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF COLORADO.

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1 In the supreme court of Colorado Territory, of the February term, A. D. 1872.

TERRITORY OF COLORADO, *ss:*

At a stated term of said supreme court, begun and held at the city of Denver, in said Territory, on the second Tuesday of February, (being the 13th day of said month,) A. D. 1872.

Present, honorable Moses Hallett, chief-justice; honorable James B. Belford and Ebenezer T. Wells, associate justices; William A. Smith, deputy U. S. marshal; and David W. Crater, clerk of said court.

Among other the following proceedings were had, to wit:

Be it remembered that heretofore, to wit, on the 12th day of February, A. D. 1872, there was filed in the office of the clerk of the supreme court of Colorado Territory a transcript of record of the district court of the first judicial district of Colorado Territory, sitting within and for the county of Arapahoe, which said transcript was duly certified by the clerk of said district court, together with a certain stipulation, and which said transcript and stipulation are in words and figures following, to wit:

Transcript of record.

2 In the supreme court, of the February term, A. D. 1872.

JOSEPH P. MACHBUEF ET AL., PLFFS. IN ERROR,
v.
ALFRED H. CLEMENTS, DEFTS. IN ERROR.

TERRITORY OF COLORADO:

Error to the district court of the first judicial district of the Territory of Colorado, sitting within and for the county of Arapahoe:

Inasmuch as it appears that the clerk of the court below, in making the transcript of the record in this case and now on file in this court, omitted to copy in said transcript the *the* stipulation attached to the report of the proofs taken in said case by John W. Webster, master in chancery, which said stipulation is in the words and figures following, viz:

"In the district court, first judicial district Colorado Territory, Arapahoe County, July term, A. D. 1870.

"TERRITORY OF COLORADO,
"*Arapahoe County, ss:*

"ALFRED H. CLEMENTS
vs.
"JOSEPH P. MACHBUEF ET AL. } In chancery.

"It is hereby stipulated and agreed that all the copies of bonds, powers of attorney, & deeds, made exhibits in any of the pleadings in said cause, to wit, in the bill of complaint and the several answers
3 herein, be and the same are to be received in evidence the same as if formally offered before the master and the execution of the originals had been proved before the master as well as the record thereof, subject to any and all objections which may be made thereto on the part of any of said parties, because of irrelevancy, incompetency, or otherwise, except as to their execution.

"S. E. BROWN,
"*For Compt.*
"ALFRED SAYRE,
"*Solicitor for A. J. Williams & others.*
"E. L. SMITH,
"*For Machbuef.*"

And inasmuch as the parties hereto desire to avoid the delay and expense of causing an amended record to be certified to this court: Now, therefore, it is stipulated and agreed by and between the solicitors for the plaintiffs in error, and the solicitor for the defendant in error, that the said stipulation above copied be, and the same hereby is, made a part of the transcript of the record in this cause, and now on file in this court, with like effect as if the same had been originally copied into said transcript and certified to by the clerk of the court below; and that the said omitted stipulation shall be read as if immediately following the certificate of the master to his report of the evidence in said cause, that is to say, at the beginning of folio No. 259 of said transcript of record, that being the place in said record where the said stipulation appears in the original of the record and proceedings in this case; and further, that this paper may be attached to the transcript of record in this case and now on file.

S. E. BROWN,
4 *Solicitor for Deft. in error, Alfred H. Clements.*
E. L. SMITH,
ALFRED SAYRE,
Solicitors for Plffs. in error.

Dated Denver, March 5th, 1872.

TERRITORY OF COLORADO,
County of Arapahoe, ss:

Pleas in the district court of the first judicial district of Colorado Territory sitting within and for the county of Arapahoe, before the honorable Christian S. Eyster, associate justice of the supreme court of said Territory, assigned to said first judicial district, at a term thereof begun and held at the court-house in Denver, in said county, on the first Tuesday, it being the fifth day of May, A. D. eighteen hundred and sixty-eight.

Present, Honorable Christian S. Eyster, presiding judge of said court.
" Henry A. Clough, clerk of said court.
" Vincent D. Markham, county attorney of said court.
" Richard Sopris, sheriff of said county.

ALFRED H. CLEMENTS
vs.
JOSEPH P. MACHEBOEUF, JOHN HUTCHINSON, Andrew J. Williams, Theodore W. Bayaud, George D. Bayaud, John M. M. Larimer, William H. H. Larimer, Edward McClintock, Marcus Walker, Chas. G. Cheever, Elisha P. Stout, Edm' Le Fevre, Elizabeth F. Beall, L.
5 A. Maurice, John Mechling, Wm. Lerchin, Chas. Lerchin, jr., George W. Kassler, William M. Clayton, Gustave F. Perrenond, Malvina N. Cunningham, John N. Cunningham, and Carlos Gove.

Be it remembered that heretofore, to wit, on the thirty-first of March, A. D. eighteen hundred and sixty-eight, came the said complainant, by Perkins, Browne & Mechling, his solicitors, and filed, on the chancery side of said court, in the office of the clerk thereof, his bill of complaint against the above-named defendants, which said bill of complaint is in words and figures as follows, to wit:

In the district court of the first judicial district of Colorado Territory, within and for the county of Arapahoe, to the May term thereof, A. D. 1868, sitting in chancery.

TERRITORY OF COLORADO,
Arapahoe County, ss:

To the honorable Christian S. Eyster, judge of said court:

Your orator, Alfred H. Clements, of the county of Gilpin and Territory of Colorado, of lawful age, would most respectfully represent that he is now, and since the 11th day of May, A. D. 1864, has been, the owner, in fee simple, of the east half of the southeast quarter and the south half of the northeast quarter of section (34) thirty-four, in township three (3) south, of range (68) sixty-eight west, and including block No. (214) two hundred and fourteen, and lot (22) twenty-two, in block No. (216) two hundred and sixteen; lots nineteen (19) and twenty (20) in
6 block No. (250) two hundred and fifty; lots fifteen (15) and sixteen and twenty-four (24,) in block (145) one hundred and forty-five; lots (26) twenty-six, (27) twenty-seven, and (28) twenty-eight, in block (144) one hundred and forty-four; lots (19) nineteen and (20) twenty, block (158) one hundred and fifty-eight; lots (17) seventeen and (18) eighteen, block (144) one hundred and forty-four; lots (9) nine and (10) ten, block (156) one hundred and fifty-six; lots (29) twenty-nine, (30) thirty, (31) thirty-one, and (32) thirty-two, block one hundred and seventy-seven; lots (3) three and (4) four, block (179) one hundred and seventy-nine; lots (27) twenty-seven and (28) twenty-eight, block (216) two hundred and sixteen; lots (19) nineteen and (20) twenty, block (262) two hundred and sixty-two; lots (23) twenty-three, (24) twenty-four, (25) twenty-five, (26) twenty-six, (27) twenty-seven, and (28) twenty-eight, block one hundred and seventy-seven (177;) lots (15) fifteen and (16) sixteen, block (225) two hundred and twenty-five; lots (23) twenty-three and (24) twenty-four, block (299) two hundred and ninety-nine; lots twenty-five (25) and twenty-six (26,) in block (188) one hundred and eighty-eight; lots (13) thirteen and (14) fourteen, block (286) two hundred and eighty-six; lots (19) nineteen and (20,) block (298) two hundred and ninety-eight; lots (9) nine and (10) ten, block (300) three hundred; lots (23) twenty-three and (24) twenty-four, block (248) two hundred and forty-eight; lots (11) eleven and (12) twelve, block (287) two hundred and eighty-seven; lots (27) twenty-seven and twenty-eight, block (156) one hundred and fifty-six; lot (10) ten, block (158) one hundred and fifty-eight; lots (31) thirty-one and thirty-two (32,) block (178) one hundred and seventy-eight; lots (3) three and (4) four, block (250) two hundred and fifty; lots (5)
7 five and six (6,) block (261) two hundred and sixty-one; lots (11) eleven and twelve (12,) block (335) three hundred and thirty-five; lots (15) fifteen and (16,) block (260) two hundred and sixty; lots (11 & 12) eleven and twelve, block (250) two hundred and fifty; lots (15 & 16) fifteen and sixteen, block (155) one hundred and fifty-five; lots (1 & 2) one and two, block (180) one hundred and eighty; lots (1 & 2) one and two, block (216) two hundred and sixteen; lots (5 & 6) five and six, block (223) two hundred and twenty-three; lots (1 & 2) one and two, block (249) two hundred and forty-nine; lots (29 & 30) twenty-nine and thirty, block (283) two hundred and eighty-three; lots (21 & 22) twenty-one and twenty-two, block (144) one hundred and forty-four; lots (3 & 4) three and four, block (157) one hundred and fifty-seven; lots (7 & 8,) block (178) one hundred and seventy-eight; lots (27 & 28) twenty-seven and twenty-eight, block (248) two hundred and forty-eight; lots (25 &

26), block (260) two hundred and sixty; lot (18) eighteen, block (124) one hundred and twenty-four; lots (1 & 2) one and two, block (178) one hundred and seventy-eight; lots (15 & 16) fifteen and sixteen, in block (216) two hundred and sixteen; lots (25 & 26) twenty-five and twenty-six, block (299) two hundred and ninety-nine; lots (13 & 14) thirteen and fourteen, block (263) two hundred and sixty-three; lots (1 & 2) one and two, block (226) two hundred and twenty-six; lots (7 & 8) seven and eight, block (225) two hundred and twenty-five; lots (1 & 2) block (263) two hundred and sixty-three; lots (21 & 22) twenty-one and twenty-two, block (251) two hundred and fifty-one; lots (25 & 26) twenty-five and twenty-six, block (225) two hundred and twenty-five; lots (7 & 8) seven and eight, block (330) three hundred and thirty; lots (11 & 12) eleven and twelve, block (297,) and lots (29 & 30) twenty-nine and thirty,
8 in block (145) one hundred and forty-five, in the east division of the city of Denver, as per the survey thereof made by E. D. Boyd, and all of which said lots and blocks are a part of the lands hereinbefore described. Your orator appends hereto a copy of the patent from the Government of the United States to your orator for said lands, which he marks "A," and makes part of this his bill of complaint.

Your orator further represents that on the third day of December, A. D. 1864, one James Hall, then in full life but since deceased, pretending to act as the attorney in fact and in behalf of your orator, conveyed by deed of general warrantee to one Joseph P. Macheboeuf the whole of block (214) two hundred and fourteen, and lot (22) twenty-two in block (216) two hundred and sixteen, as heretofore described. That on the 4th day of October, A. D. 1864, the said James Hall, under the like pretence, conveyed to one John H. Hutchenson lots (21 & 22) in block (251) two hundred and fifty-one, lots (25 & 26) twenty-five and twenty-six in block (225) two hundred and twenty-five, lots (7 & 8) seven and eight in block (320) three hundred and twenty, lots (11 & 12) eleven and twelve in block (297) two hundred and ninety-seven, and lots (29 & 30) in block (145) one hundred and forty-five. That on the (11) eleventh day of May, A. D. 1865, the said James Hall, under a like pretence, conveyed by a like deed to one Andrew J. Williams lots (19 & 20) nineteen and twenty in block (250) two hundred and fifty, lots (15, 16, & 24) fifteen, sixteen, and twenty-four, in block (145) one hundred and forty-five, lots (26, 27, & 28) twenty-six, twenty-seven, and twenty-eight, in block (144) one hundred and forty-four, and lots (19 & 20) nineteen and twenty in block (158) one hundred and fifty-eight. That on the
9 20th day of July, A. D. 1865, the said James Hall, under a like pretence, conveyed by a like deed to one John M. M. Larimer lots (15 & 16) fifteen and sixteen in block (225) two hundred and twenty-five, and lots (23 & 24) twenty-three and twenty-four in block (299) two hundred and ninety-nine; that on the 20th day of July, A. D. 1865, the said James Hall, under a like pretence, conveyed by a like deed to one William H. H. Larimer lots (25 & 26) twenty-five and twenty-six in block (188) one hundred and eighty-eight, lots (13 & 14) thirteen and fourteen in block (286) two hundred and eighty-six, lots (19 & 20) nineteen and twenty in block (298) two hundred and ninety-eight, and lots (9 & 10) nine and ten in block (300) three hundred; that on the 8th day of August, A. D. 1865, the said James Hall, under a like pretence, conveyed by a like deed to one Edward McClintock lots (23 & 24) twenty-three and twenty-four in block (248) two hundred and forty-eight; that on the 20th day of July, A. D. 1865, the said James Hall, under a like pretence, conveyed by a like deed to one Marcus Walker lots (11 & 12) eleven and twelve in block (287) two hundred and eighty-seven, lots (27

& 28) twenty-seven and twenty-eight in block (156) one hundred and fifty-six, lot (10) ten in block (158) one hundred and fifty-eight, lots (31 & 32) thirty-one and thirty-two in block (178) one hundred and seventy-eight, lots (3 & 4) three and four in block (250) two hundred and fifty, lots (5 & 6) five and six in block (261) two hundred and sixty-one, and lots (11 & 12) eleven and twelve in block (335) three hundred and thirty-five; that on the day of , A. D. 186 , the said James Hall, under a like pretence, conveyed to one Charles G. Cheever by like deed lots (15 & 16) fifteen and sixteen in block (260) two hundred and sixty, lots (11 & 12) eleven and twelve in block (250) two hundred and fifty, lots (15 & 16) fifteen and sixteen in block (155) one hundred and fifty five, lots (1 & 2) one and two in block (180) one hundred and eighty, lots (1 & 2) one and two in block two hundred and sixteen (216), lots (5 & 6) five and six in block (223) two hundred and twenty-three, and lots (1 & 2) one and two in block (249) two hundred and forty-nine; that on the 20th day of July, A. D. 1865, the said James Hall, under a like pretence, conveyed to one Elisha P. Stout by a like deed, lots (29 & 30) twenty-nine and thirty in block (283) two hundred and eighty-three, lots (21 & 22) twenty-one and twenty-two in block (144) one hundred and forty-four, lots (13 & 14) thirteen and fourteen in block (157) one hundred and fifty-seven, lots (7 & 8) seven and eight in block (178) one hundred and seventy-eight, lots (27 & 28) twenty-seven and twenty-eight in block (248) two hundred and forty-eight, and lots (25 & 26) twenty-five and twenty-six in block (260) two hundred and sixty; that on the 20th day of July, A. D. 1865, the said James Hall, under a like pretence, conveyed to one Elizabeth F. Beale by a like deed lots (18) eighteen in block (124) one hundred and twenty-four, lots (1 & 2) one and two in block (178) one hundred and seventy-eight, lots (15 & 16) fifteen and sixteen in block (215) two hundred and fifteen, lots (25 & 26) twenty-five and twenty-six in block (299) two hundred and ninety-nine, and lots (13 & 14) thirteen and fourteen in block (263) two hundred and sixty-three; that on the 20th day of July, A. D. 1865, the said James Hall, under a like pretence, conveyed to one Emma Le Fevre by a like deed, lots (1 & 2) one and two in block (226) two hundred and twenty-six, lots (7 & 8) seven and eight in block (225) two hundred and twenty-five, and lots (1 & 2) one and two in
11 block (263) two hundred and sixty-three; and that on the 3rd day of August, A. D. 1865, the said James Hall, under a like pretence, conveyed to Theodore W. Bayaud and George D. Bayaud, administrators of the estate of Thomas J. Bayaud, deceased, lots (17 & 18) seventeen & eighteen in block (144) one hundred and forty-four, lots (9 & 10) in block (156) one hundred and fifty-six, lots (29, 30, 31, and 32) twenty-nine, thirty, thirty-one, and thirty-two in block (177) one hundred and seventy-seven, lots (3 & 4) three and four in block (179) one hundred and seventy-nine, lots (27 & 28) twenty-seven and twenty-eight in block (216) two hundred and sixteen, lots (19 & 20) nineteen and twenty in block (262) two hundred and sixty-two, lots (24 & 25) twenty-four and twenty-five, (26, 27, & 28) twenty-six, twenty-seven, and twenty-eight, in block *in block* (177) one hundred and seventy-seven, and that said conveyances are all of record in the office of the clerk and recorder of said county of Arapahoe, to which your orator begs to refer.

Your orator further represents that all of said deeds of conveyance were made by the said James Hall without any authority whatever, of which the said several grantees had full notice, but combined with the said James Hall to cheat, wrong, and defraud your orator, took said deeds of conveyance and now hold the said property, so far as the same

has not been conveyed by them as hereinafter set forth, and absolutely refuse to reconvey the same to your orator, although thereunto frequently requested.

Your orator further represents that on the 30th day of May, A. D. 1867, the said George D. Bayaud and Theodore W. Bayaud conveyed to one Gustave F. Perrinouad lots (17 & 18) seventeen and eighteen in block (144) one hundred and forty-four, lots (29, 30, 31, & 32,) twenty-nine, thirty, thirty-one, and thirty-two, in block (177) one hundred and seventy-seven, lots (27 & 28) twenty-seven and twenty-eight in block (216) two hundred and sixteen, and lots (23, 24, 25, 26, 27, and 28,) twenty-three, twenty-four, twenty-five, twenty-six, twenty-seven, and twenty-eight, in block (177) one hundred and seventy-seven, and to L. A. Maurice lots (9 & 10) nine and ten in block (156) one hundred and fifty-six, and lots (19 & 20) nineteen and twenty in block (262) two hundred and sixty-two, being part of the lots hereinbefore described; that said conveyances were made with a full knowledge on the part of said grantees that the title of the said grantors was fraudulent and without any consideration.

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Your orator further represents that on the 9th day of December, A. D. 1865, the said Charles G. Cheever sold and conveyed to one Malvina N. Cunningham, lots (11 & 12) eleven and twelve in block 250, and that the said Malvina N. Cunningham, John N. Cunningham, her husband, on the 13th day of February, A. D. 1868, sold and conveyed the same lots to one John Mechling, and that the said Chever, Cunningham, and Mechling, at the several times and dates of said several conveyances, all well knew that the said title so conveyed to and by them was fraudulent, and that your orator was the owner of said premises.

Your orator further represents that on the 28th day of November, A. D. 1865, the said John M. M. Larimer sold and conveyed to William Lerchen and Charles Lerchen, jr., lots (15 & 16) fifteen and sixteen in block (225) two hundred and twenty-five, and lots (23 & 24) twenty-three and twenty-four, in block (299) two hundred and ninety-nine, and that on the same day the said William H. H. Larimer sold and conveyed lots (25 & 26) twenty-five and twenty-six in block (188) one hundred and eighty-eight, lots (13 & 14) in block (286) two hundred and eighty-six, lots (19 & 20) nineteen and twenty in block (298) two hundred and ninety-eight, and lots (9 & 10) nine and ten in block (300) three hundred.

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Your orator further represents that on the 22nd day of November, A. D. 1867, the said William Lerchen sold and conveyed to Charles Lerchen, jr., the one undivided one-third of lots (25 & 26) twenty-five and twenty-six in block (188) one hundred and eighty-eight, lots (13 & 14) thirteen and fourteen in block (286) two hundred and eighty-six, lots (19 & 20) nineteen and twenty in block (298) two hundred and ninety-eight, and lots (9 & 10) nine and ten in block (300) three hundred; that on the 4th day of January, A. D. 1868, the said Charles Lerchen, jr., conveyed to George W. Kasler and William M. Clayton, in trust for the use and benefit of his creditors, the one undivided one-third of the said last described premises. And on the 29th day of January, A. D. 1868, the said Charles Lerchen, jr., conveyed the one-third of the same premises to one Carlos Gove.

Your orator further represents that all of the said parties took said conveyances with a full knowledge of all the facts herein contained and set forth, and with the intent to cheat, wrong, and defraud your orator, and they, and each of them, absolutely refuse to reconvey the said sev-

eral lots so conveyed so them, to your orator, although thereunto frequently requested so to do.

And forasmuch as your orator is without remedy by the course of the common law, he asks the aid of this honorable court and prays that the said Joseph P. Machebouef, John H. Hutchinson,
14 Andrew J. Williams, Theodore W. Bayaud, George D. Bayaud, John M. M. Larimer, William H. H. Larimer, Edward McClintock, Marcus Walker, Charles G. Chever, Elisha B. Stout, Emma C. Le Fevre, Elisabeth F. Beall, L. A. Maurice, and whose full name is to your orator unknown, John Mechling, William Lerchen, Charles Lerchen, jr., George W. Kasler, William M. Clayton, Gustave F. Perrinaund, Malvina N. Cunningham, John N. Cunningham, and Charles Gove, may be made parties defendant to this his bill of complaint; that the most gracious writ of summons in chancery may issue against them returnable to the first day of the next term of said court, that they, the said defendants, and each of them, may, to the best of their knowledge, remembrance, and belief, full, true, direct, and perfect answers severally make to all and singular the matters aforesaid, so far as the said matters may relate to the title, interest, and estate, which they, or either of them, may claim in and to any part of the premises herein described, (but not under oath, their oaths thereto being hereby waived,) and that as fully and particularly as if the same were here again repeated; and that on the final hearing of said cause, that the said several deeds executed by the said James Hall, and as hereinbefore set forth to the several parties herein mentioned may be cancelled, and that the several deeds of conveyance made for the said lots by the several grantees in the deed so executed by the said James Hall, and the several deeds made and delivered for any of said lots by or to the persons heretofore named, as now or at any time since the execution of said deeds by the said James Hall, may also be cancelled, and the said lots returned to your orator, wholly discharged from all said conveyances, and that your orator may have
15 such other & further relief in the premises as equity and good conscience may require, &c.

GEO. W. PERKINS &
BROWNE & MECHLING,
Sol. for Complt.

The United States of America to all to whom these presents shall come, greeting:

Whereas in pursuance of the act of Congress, approved March 3, 1855 entitled an act in addition to certain acts granting bounty-land to certain officers and soldiers who have been engaged in the military service of the United States, there has been deposited in the General Land-Office warrant No. 103,468 for 160 acres, in favor of Ah-C-noa-Oh-qua, minor child of Ne-sho-wha, deceased, warrior, Captain Moses' company Deleware Indians, Florida war, with evidence that the same has been duly located upon the south half of the northeast quarter and the east half of the southeast quarter of section thirty-four in township three south of range sixty-eight west, in the district of lands formerly subject to sale at Golden City, now Denver City, Colorado Territory, containing one hundred and sixty acres, according to the official plat of the survey of the said land, returned to the General Land-Office by the surveyor-general, the said warrant having been assigned by the said Ah-C-noa-O-qua to Louis A. Merenger, and by him to Alfred H. Clements, in whose favor the said tract has been located:

Now know ye, that there is therefore granted by the United States, unto the said Alfred H. Clements as assignee as aforesaid, and to his heirs, the tract of land above described, to have and to hold the said tract of land, with the appurtenances thereof, unto the said Alfred H. Clements, as assignee as aforesaid, and to his heirs and assigns forever.

In testimony whereof, I, Andrew Johnson, President of the
16 United States of America, have caused these letters to be made patent, and the seal of the General Land-Office to be hereunto affixed.

Given under my hand at the city of Washington, the first day of December, in the year of our Lord one thousand eight hundred and sixty-five, and of the Independence of the United States the ninetieth.

By the President:

[SEAL.] ANDREW JOHNSON,
By EDW. D. NEILL, *Sec'y.*

J. N. GRANGER, *Recorder of the General Land-Office.*
(Recorded, vol. 233, page 51.)

Filed for record July 5th, A. D. 1866, at 4 o'clock p. m. Recorded in book 11, page 253.

And thereupon there was issued out of and under the seal of said court a chancery summons, which said summons is in words and figures as follows, to wit:

TERRITORY OF COLORADO,
County of Arapahoe:

The people of the Territory of Colorado to the sheriff of Arapahoe County, greeting:

We command you that you summon Joseph P. Machebouef, John H. Hutchinson, Andrew J. Williams, Theodore W. Bayaud, George D. Bayaud, John M. M. Larimer, William H. H. Larimer, Edward McClintock, Marcus Walker, Charles G. Cheever, Elisha P. Stout, Edward Le Fevre, Elizabeth F. Beall, L. A. Maurice, John Mechling, William Lerchin, Charles Lerchin, jr., George W. Kassler, William M. Clayton, Gustave F. Perrinaund, Malvina N. Cunningham, John N. Cun-
17 ningham, and Carlos Gove, if they shall be found in your county, personally to be and appear before the district court of said Arapahoe County, on the first day of the next term thereof, to be holden at the court-house, in Denver City, in said Arapahoe County, on the first Tuesday of May, A. D. 1868, to answer unto Alfred H. Clements in a certain bill of complaint filed in said court on the chancery side thereof to quiet title, &c. And have you then and there this writ, with an indorsement thereon in what manner you shall have executed the same.

Witness, Henry A. Clough, clerk of said court, and the seal thereof, at Denver aforesaid, this 31st day of March, A. D. 1868.

[SEAL.] HENRY A. CLOUGH, *Clerk.*

And upon the back of said summons was the following endorsement, to wit:

TERRITORY OF COLORADO,
Arapahoe County, ss:

I have duly executed this writ by reading the same to & leaving true copies of this writ with the following-named persons, to wit: Joseph P.

Machboug, Andrew J. Williams, J. M. Mechling, C. G. Cheever, Charles Lerchen, jr., Wm. Lerchen, G. W. Kasler, W. M. Claton, J. N. Cunningham, Malvina N. Cunningham, Gus. Perrinoud, Carlos Gove.

As to the others named in this writ, not found in my county. April 8th, 1868.

RICHARD SOPRIS, *Sheriff.*

And afterward, to wit, on the ninth day of May, A. D. eighteen hundred and sixty-eight, came George F. Crocker, solicitor for part of the defendants herein, and filed a demurrer, in words and figures as
18 follows, to wit:

In the district court of the first judicial district of Colorado Territory, in & for the county aforesaid, of the May term, A. D. 1868. In chancery.

TERRITORY OF COLORADO,
County of Arapahoe, ss:

The demurrer of Joseph P. Machebeuf, Theodore W. Bayaud, George D. Bayaud, L. A. Maurice, William May Clayton, and Gustave F. Perrenoud to the bill of complaint of Alfred H. Clements, complainant.

These defendants respectively by protestation, not confessing or acknowledging all or any of the matters and things in the said complainant's bill to be true in such manner and form as the same are therein set forth and alleged, doth demur thereto, and for cause of demurrer showeth that the complainant hath not in and by his said bill made or stated such a case as doth or ought to entitle him to any such discovery or relief as is thereby sought or prayed for from or against these defendants. Whereof these defendants respectively demand the judgment of this honorable court whether they shall be compelled to make any further or other answer to the said bill or any of the matters and things therein contained, and prays to be hence dismissed with their reasonable costs in this behalf sustained.

GEORGE F. CROCKER,
Solicitor for Defendants above named.

And afterwards, to wit, on the sixth day of June, A. D. eighteen
19 hundred and sixty-eight, the same being one of the regular days of the May term, A. D. eighteen hundred and sixty-eight, the following proceedings were had and entered of record in said cause, to wit:

ALFRED H. CLEMENTS
vs.
JOSEPH P. MACHEBEOUF ET AL. } In chancery.

Now, on this day, on motion of Messrs. Browne and Mechling and Geo. W. Purkins, complainant's solicitors, the defendants were ruled to plead, answer, or demur on or before the first day of the next term of this court, and thereupon this cause was continued.

And afterwards, to wit, on the sixth day of October, A. D. eighteen hundred and sixty-eight, came Alfred Sayre, solicitor for part of the defendants herein, and filed a demurrer which is in words and figures as follows, to wit:

In the district court of the first judicial district of Colorado Territory, within and for the county of Arapahoe, of the May term, A. D. 1868.

TERRITORY OF COLORADO,
County of Arapahoe, ss:

The demurrer of John H. Hutchinson, Andrew J. Williams, John M. M. Larimer, William H. H. Larimer, Edward McClintock, Marcus Walker, Charles G. Cheever, Elisha P. Stout, Edward C. Le Fevre, Elizabeth F. Beall, John Mechling, William Lerchin, Charles Lerchin, jr., George W. Kassler, Malvina N. Cunningham, John N. Cunningham, and Charles Gove to the bill of complaint of Alfred H. Clements, complainant.

20 These defendants respectively, by protestation, not confessing or acknowledging all or any of the matters and things in the said complainant's bill to be true in such manner and form as the same are therein set forth and alleged, doth demur thereto, and for cause of demurrer showeth that the complainant hath not, in and by his said bill, made or stated such a case as doth or ought to entitle him to any such discovery or relief as is thereby sought or prayed for, from or against these defendants.

Wherefore these defendants respectively demand the judgment of this honorable court, whether they shall be compelled to make any further or other answer to the said bill, or any of the matters and things therein contained, and pray to be hence dismissed with their reasonable costs in this behalf sustained.

ALFRED SAYRE,
Solicitor for Defendants above named.

And afterwards, to wit, on the fourth day of January, A. D. eighteen hundred and sixty-nine, the same being one of the regular days of the October term, A. D. eighteen hundred and sixty-nine, the following proceedings were had and entered of record in said cause, to wit:

ALFRED H. CLEMENTS
vs.
JOSEPH P. MACHEBEAUF ET AL. } In chancery.

And now on this day comes the said complainant, by Messrs. Browne and Mechling and George W. Purkins, his solicitors, and said
21 defendants, Joseph P. Machebeauf, Theodore W. Bayaud, and George D. Bayaud, L. A. Maurice, William M. Calayton, and Gustave S. Perrenoud; also come, by Messrs. J. Bright Smith and E. L. Smith, their solicitors, and the demurrer of said defendants last above named to the bill of complaint herein was submitted to the court by counsel without argument, after which the matter was held under advisement by the court. And thereupon come the said defendants, John H. Hutchinson, Andrew J. Williams, John M. M. Larimer, William H. H. Larimer, jr., Edward McClintock, Marcus Walker, Charles G. Cheever, Elisha P. Stout, Edward C. Le Fevre, Elizabeth F. Beall, John Mechling, William Lerchin, Charles Lerchin, jr., George W. Kasler, Malvina N. Cunningham, John N. Cunningham, and C. Gove, by A. Sayre, their solicitor. And thereupon came on to be heard the demurrer of said defendants last above named to the bill of complaint herein, and was submitted to the court by counsel without argument, after which the matter was held under advisement by the court.

And afterwards, to wit, on the eighteenth day of January, A. D. eighteen hundred and sixty-nine, it being still of the October term of said court, the following proceedings were had and entered of record in said cause, to wit:

ALFRED H. CLEMENTS
vs.
JOSEPH P. MACHEBEAUF ET AL. } In chancery.

Now on this day, the court having heretofore taken the de-
22 murrer of the said defendants, Joseph P. Machebeauf, Theodore W. Bayaud, George D. Bayaud, L. A. Maurice, William M. Clayton, and Gustave F. Perrenoud, to the bill of complaint herein under advisement, and the court being fully advised in the premises, it is considered by the court that the said demurrer be overruled. And thereupon the said defendants last above named prays leave to answer the bill of complaint in this cause, and to them it is granted. And the court having heretofore taken the demurrer of the defendants John H. Hutchinson, Andrew J. Williams, John M. M. Larimer, William H. H. Larimer, Edward McClintock, Marcus Walker, Charles G. Cheever, Elisha P. Stout, Edward C. Le Fevre, Elizabeth F. Beall, John Mechling, William Lerchin, Charles Lerchin, junior, George W. Kassler, Malvina N. Cunningham, John N. Cunningham, and C. Gove, to the bill of complaint herein under advisement, and the court being fully advised in the premises, it is considered by the court that the said demurrer be overruled, and the said defendant' last above named therefore pray leave of court to answer the said bill, and to them it is granted.

And afterwards, to wit, on the twenty-third day of January, A. D. eighteen hundred and sixty-nine, the same being one of the regular days of the January term, A. D. eighteen hundred and sixty-nine, the following proceedings were had and entered of record in said cause, to wit:

ALFRED H. CLEMENTS
vs.
JOSEPH P. MACHEBEAUF ET AL. } In chancery.

23 Now on this day comes the said complainant, by Messrs. Brown and Neckling and George W. Perkins, his solicitors, and the said defendants, by Messrs. Sayre and Smith and Smith, their solicitors, also come, and thereupon, on motion of said complainants' solicitors, the said defendants were ruled to answer the bill of complaint in this cause on or before the tenth day of February next.

And afterwards, to wit, on the tenth day of February, A. D. eighteen hundred and sixty-nine, it being still of the January term, A. D. eighteen hundred and sixty-nine, the following proceedings were had and entered of record in said cause, to wit:

ALFRED H. CLEMENTS
vs.
JOSEPH P. MACHEBEAUF ET AL. } In chancery.

On motion of Amos Steck, it is ordered that exhibits, marked "A" and "B," to the answer of J. P. Machebeuf, may be taken and considered as

part of the answer of all the defendants appearing in the case of A. H. Clements vs. J. P. Machebeuf and others, and that exhibit marked "E," to the answer of Gustave F. Perrenoud, may be considered and taken to be part of the answer of Louis A. Maurice in said cause.

By the court.

C. S. EYSTER.

FEB. 10, 1869.

And on the same day, to wit, the tenth day of February, A. D. eighteen hundred and sixty-nine, came Joseph P. Machebeouf, by his solicitor, and filed herein his answer to the bill of complaint, which said
24 answer is in words and figures as follows, to wit:

In the district court of the first judicial district within and for the Territory of Colorado & for the county of Arapahoe, in chancery.

THE TERRITORY OF COLORADO,
Arapahoe County, ss:
Before Christian S. Eyster, justice, &c.

The answer of Joseph P. Machebeuf, one of the defendants to the bill of complaint of Alfred H. Clements, complainant.

This defendant, now and at all times hereafter saving and reserving to himself all manner of benefit and advantage of exception to the many errors and insufficiencies in the complainant's said bill of complaint contained, for answer thereunto, or unto so much or such parts thereof as this defendant is advised is material for him to make answer unto, answers and says that he admits that the said complainant, Alfred H. Clements, was, on the 11th day of May, A. D. 1864, the owner in fee-simple of the east half of the southeast quarter, and the north half of the northeast quarter of section (34) thirty-four, in township three (3) south, of range sixty-eight (68) west, including block numbered two hundred and fourteen, (214,) and also lot twenty-two, (22,) in block numbered two hundred and sixteen, (216,) in the east division of the city of Denver, according to the survey of said city as made by one E. D. Boyd, as stated in the bill of complainant. And this defendant, further answering, admits that on the third day of December, A. D. 1864, one James Hall, then living, but now deceased, acted as the agent or attorney in fact of the said complainant, and on his behalf, and in and by virtue of the several powers of attorney or letters of attorney, exemplified
25 copies of which said powers or letters of attorney are hereto attached and marked, respectively, Exhibits A & B, which this defendant prays may be considered part of this answer, the said James Hall did convey to this defendant by deed, as attorney in fact for the said complainant, for and in consideration of the sum of twelve dollars paid by this defendant to the said Hall, the following-described lots or parcels of land, being part or a portion of the east half of the southeast quarter and the south half of the northeast quarter of section thirty-four, (34,) in township three (3) south, of range sixty-eight west, as stated in the bill of complaint, to wit: Lots one, (1,) two, (2,) three, (3,) four, (4,) five, (5,) six, (6,) seven, (7,) nine, (9,) ten, (10,) eleven, (11,) twelve, (12,) thirteen, (13,) fourteen, (14,) fifteen, (15,) sixteen, (16,) seventeen, (17,) eighteen, (18,) nineteen, (19,) twenty-one, (21,) twenty-two, (22,) twenty-three, (23,) twenty-four, (24,) twenty five, (25,) twenty-six, (26,) twenty-seven, (27,) twenty-eight, (28,) twenty-nine, (29,)

thirty, (30,) thirty-one, (31,) and thirty-two, (32,) in block two hundred and fourteen, (214,) and lot twenty-two, (22,) in block two hundred and sixteen, (216.)

And this defendant, further answering, denies that the said James Hall conveyed to this defendant the said mentioned and described lots without any authority from the said complainant, but confesses that lots numbered eight (8) and twenty, (20,) in said block numbered two hundred and fourteen, (214,) were not conveyed to this defendant by the complainant or by his agent, James Hall, under any authority, and this defendant does not now, and never did, claim to own the said described and mentioned lots, eight and twenty, in said block two hundred and fourteen, (214,) aforesaid.

26 And this defendant, further answering, denies that he combined with the said James Hall, or any other person or persons whomsoever, to cheat, wrong, or defraud the said complainant by means of the conveyance, stated to have been made by the said James Hall to this defendant, as stated in the bill of complainant, but this defendant says that the said James Hall, by virtue of the powers of attorney, marked Exhibits A & B, or by virtue of either of them or both, conveyed to this defendant the said several lots hereinbefore mentioned and described, for a valuable consideration; and this defendant admits that he now holds the said lots in blocks two hundred and fourteen (214) and two hundred and sixteen, (216,) conveyed to this defendant by the said James Hall, as attorney in fact of the said complainant. And this defendant admits that he has not conveyed the said mentioned lots to the complainant, but claims to own the same by virtue of the conveyance mentioned in the bill of complainant, which said deed of conveyance is hereto attached, marked "C," and defendant prays may be made and considered a part of this answer. And this defendant denies all unlawful combination and confederacy in the said bill charged, without that any other matter or thing material or necessary for this defendant to make answer unto, confessed or avoided, traversed or denied, is true, to the knowledge or belief of this defendant. All which matters and things this defendant is ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays to be hence dismissed with his reasonable costs and charges in that behalf most wrongfully sustained.

JOSEPH P. MACHEBEUF,
By AMOS STECK,
Solicitor for Deft.

J. BRIGHT SMITH &
AMOS STECK,
Solicitors for Deft.

27 C.

This deed, made this third day of December, in the year of our Lord one thousand eight hundred and sixty-four, between Alfred H. Clements, of Gilpin County, Colorado, by his attorney in fact, James Hall, of the county of Arapahoe and Territory of Colorado, of the first part, and J. P. Machebeuf, of the county of Arapahoe and Territory of Colorado, of the second part, witnesseth: That the said party of the first part, for and in consideration of the sum of twelve dollars to the said party of the first part in hand paid by the said party of the second part, the receipt whereof is hereby confessed and acknowledged, has granted, bargained, sold, and conveyed, and by these presents doth

grant, bargain, sell, convey, and confirm, unto the said party of the second part, his heirs and assigns forever, all the following-described lot or parcel of land, situate, lying, and being in the county of Arapahoe and Territory of Colorado, to wit: Lots number one, (1,) two, (2,) three, (3,) four, (4,) five, (5,) six, (6,) seven, (7,) nine, (9,) ten, (10,) eleven, (11,) twelve, (12,) thirteen, (13,) fourteen, (14,) fifteen, (15,) sixteen, (16,) seventeen, (17,) eighteen, (18,) nineteen, (19,) twenty-one, (21,) twenty-two, (22,) twenty-three, (23,) twenty-four, (24,) twenty-five, (25,) twenty-six, (26,) twenty-seven, (27,) twenty-eight, (28,) twenty-nine, (29,) thirty, (30,) thirty-one, (31,) thirty-two, (32,) in block number two hundred and fourteen, (214,) and lot number twenty-two, (22,) in block number two hundred and sixteen, (216,) situate in Denver City, east division, county & Territory aforesaid: To have and to hold the same, together with all and singular the appurtenances and privileges thereunto belonging, or in any wise thereunto appertaining, and all the estate, right, title, interest, and claim whatsoever, of the said party of the first part, either in law or equity
28 to the only proper use, benefit, and behoof of the said party of the second part, his heirs and assigns forever; and the said party of the first part, the aforesaid tracts or parcels of land, and premises, unto the said party of the second part, his heirs and assigns, against the claim or claims of all and every person whatsoever, claiming by, through, or under him, doth and will warrant and forever defend by these presents.

In witness whereof the said party of the first part has hereunto set his hand and seal the day and year first above written.

ALFRED H. CLEMENTS. [L. S.]
By JAMES HALL, [L. S.]
His attorney in fact.

[Internal-revenue stamp, 50 cts., attached.]

TERRITORY OF COLORADO,
County of Arapahoe, ss:

I, Chas. G. Chever, a notary public in and for said county, in the Territory aforesaid, do hereby certify that James Hall, attorney in fact for Alfred H. Clements, who is personally known to me as the person whose name is subscribed to the annexed deed, appeared before me this day, in person, and acknowledged that he signed, sealed and delivered the said instrument of writing as his free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and notarial seal, this thirty-first day of December, A. D. 1864.

[SEAL.] CHAS. G. CHEVER,
Notary Public.

2343.] *Warranty deed.*

29 A. H. Clements, by att. (whole B. 214) to Jos. P. Machebeuf.

TERRITORY OF COLORADO,
County of Arapahoe:

This deed was filed for record at 10 inst., m., December 31st, 1864, and duly recorded in book 5, page 423, No. —.

CHAS. G. CHEVER,
Recorder & Ck.

Fees, $1.90, paid.

Alfred H. Clements' power of atty. to James Hall.

Know all men by these presents, that I, Alfred H. Clements, of Central City, in the county of Gilpin, and Territory of Colorado, have made, constituted, and appointed, and by these presents do make, constitute, and appoint James Hall, of Denver City, my true and lawful attorney, for me, and in my name, place, and stead, to act upon the application and demand of any person or persons actually ow'ing, and showing the same by abstracts of title properly certified to by the county clerk of Arapahoe County, C. T., to town lots in Denver City, situate on the south (½) half of northeast ¼, and east (½) half of southeast (¼) quarter of section (34) thirty-four, town. (3) three south, range (68) sixty-eight west, in aforesaid county & Territory, and upon the payment of forty cents (40 cts.) for each and every lot, and the further expenses of making, acknowledging, & delivering, and all other expenses of every name and nature, in accordance with the tenor & meaning of a certain bond executed by me to H. J. Brendlinger, mayor of Denver City, in trust for the citizens thereof, dated June, 1864; and upon the
30 fulfillments of the above requirements, and all others, as intended & mentioned in said bond aforesaid to make, execute, and deliver good and sufficient deed or deeds with covenants of warranty to any person or persons that may apply for the same within three months from date of said bond aforesaid, and in compliance of the same, giving and granting unto my said attorney full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in about the premises as fully to all intents and purposes as I might or could do if personally present, with full power of revocation; hereby ratifying and confirming all that my attorney or his substitute shall lawfully do or cause to be done by virtue thereof.

In witness whereof I have hereunto set my hand and seal this four teenth day of June, A. D. 1864.

ALFRED H. CLEMENTS.

Sealed and delivered in presence of—
CHAS. R. FISH.

(Written across the face in red-ink:)

DENVER CITY, *March* 9, 1866.

Know all men by these presents that I, Alfred H. Clements, do hereby cancel and annul the within power of attorney this the date above written.

A. H. CLEMENTS.

DR. WASHINGTON GRIZZEY.

[Internal-revenue stamp of $100 attached.]

TERRITORY OF COLORADO,
County of Gilpen:

Be it known that on this 14th day of June, A. D. 1864, before me, the subscribed, personally came Alfred H. Clements, to me known as the same person described in, and who executed the foregoing instrument of writing, and acknowledged the execution thereof to be his free act and deed, for the uses and purposes therein mentioned.

Witness my hand and notarial seal this day and year above written.

[NOTARIAL SEAL.] CHAS. R. FISH,
Notary Public.

31 Filed for record June 23, A. D. 1864, at 10 o'clock a. m.

EXHIBIT A.

TERRITORY OF COLORADO,
County of Arapahoe:

I, Webster D. Anthony, county clerk and ex-officio recorder of Arapahoe County, Colorado, do hereby certify that the above and foregoing is a true and correct copy of a certain instrument of writing, filed for record, and as recorded on the 23d day of June, A. D. 1864, at 10 o'clock a. m. F. and recorded in book B of Arapahoe County records, on page 232.

In witness whereof I hereby set my hand and official seal at Denver this 6th day of February, A. D. 1869.

WEBSTER D. ANTHONY,
Clerk and Recorder.

[SEAL.]
[Five-cent stamp.]

EXHIBIT B.

Power of attorney—A. H. Clements to James Hall.

[Filed for record March 12, 1867, at 3¾ o'clock p. m.]

Know all men by these presents that I, Alfred H. Clements, of Central City, in the county of Gilpen and Territory of Colorado, have made, constituted, and appointed, and by these presents do make, constitute, and appoint James Hall to be my true and lawful attorney, for me and in my name and for my sole use to enter into and take possession of all such lands, tenements, hereditaments and real estate whatever in the county of Arapahoe, Territory of Colorado, to or in which I am or may be in any way entitled or
32 interested, and to grant, bargain, and sell the same or any part or parcel thereof, for such sum or price, and on such terms, as to him shall seem meet, and for me and in my name to make, execute, acknowledge, and deliver good and sufficient quit-claim deeds for the same, hereby giving and granting unto my said attorney full power and authority in the premises, to use all lawful means, in my name and for my sole benefit, for the purposes aforesaid, and generally to do and perform all such acts, matters, and things as my said attorney shall deem necessary or expedient for the completion of the authority hereby given, as fully as I might and could do if I were personally present; and, finally, hereby ratifying and confirming all the acts of my said attorney done by virtue of these presents.

In witness whereof I have hereunto set my hand and seal, this 17th day of June, in the year of our Lord one thousand eight hundred and sixty-four.

ALFRED H. CLEMENTS. [SEAL.]

Signed and sealed in presence of—
CHAS. R. FISH.

(Written across the face in red ink:)
This power of attorney is hereby revoked this 22d day of April, A. D. 1867.

ALFRED H. CLEMENTS. [SEAL.]

TERRITORY OF COLORADO,
Gilpen County, ss:

I, notary public in and for said county, do certify that Alfred H. Clements, whose signature appears to the within power of attorney and who is personally known to me to be the person whose name is subscribed to such power of attorney as having executed the same, appeared before me this day in person and did acknowledge the same to be his free act and deed.

Given under my hand and seal this day of June, A. D. 1864.
[SEAL.]
CHAS. R. FISH,
Notary Public, Col. Ter.

[$1.00 internal-revenue stamp attached.]

33 TERRITORY OF COLORADO,
County of Arapahoe, ss:

I, Webster D. Anthony, county clerk and ex-officio recorder of Arapahoe County, Colorado, do hereby certify that the above and foregoing is a true and correct copy of a certain instruement of writing filed for record and as recorded on the 12 day of March, 1867, at 3¾ o'clock p. m., in book 10, on page 241.

In witness whereof I have hereunto set my hand and seal (official) at Denver, this 8th day of February, A. D. 1869.
[SEAL.]
WEBSTER D. ANTHONY,
Clerk & Recorder.

[5-cent stamp.]

And on the same day, to wit, the tenth day of February, A. D. 1869, came Gustave F. Perrenoud, by his solicitor, and filed herein his answer to the bill of complaint, which said answer is in words and figures as follows, to wit:

THE TERRITORY OF COLORADO,
Arapahoe County, ss:

In the district court of the first judicial district of Colorado Territory, within and for Arapahoe County, in chancery.

The answer of Gustave F. Perrenoud, one of the defendants to the bill of complaint of Alfred H. Clements, complainant.

This defendant, now and at all times hereafter saving and reserving to himself all manner of benefit and advantage of exception to
34 the many errors and insufficiencies in the complainant's said bill of complaint contained, for answer thereunto, or unto so much or such parts thereof as this defendant is advised is material for him to make answer unto, answers and says, that he admits that the complainant was the owner in fee-simple on the 11th day of May, A. D. 1864, of the lands mentioned in the said bill of complaint, and that the several lots in blocks stated in said bill of complaint were included in and formed portions of the said land described in the said bill of complaint as owned by the complainant on the 11th day of May, 1864.

And the said defendant, further answering, saith that on the third day of August, A. D. 1865, one James Hall, then in full life but now deceased, acting as the attorney in fact of the said complainant, in virtue of two several powers of attorney executed by the said complainant, one

of said powers of attorney executed of the date of the 14th day of June, A. D. 1864, and the other power of attorney executed on the 17 day of June, A. D. 1864, to the said James Hall, conveyed by deed of conveyance to Theodore W. Bayaud and George D. Bayaud the several lots mentioned and described to have been so conveyed to the said Theodore W. Bayaud and George D. Bayaud in the bill of complainant. And the defendant, further answering, says that such conveyance was made to the said Theodore W. Bayaud and George D. Bayaud, and by the said James Hall as attorney in fact for the said complainant, in good faith and for a valuable consideration paid by the said Theodore W. Bayaud and George D. Bayaud, and this defendant prays the court leave to make the exhibits, marked "A" and "B," attached to the answer of Joseph P. Machebeuf in this case, a part of this defendant's answer to the said bill of the complainant.

35 And this defendant, for further answer, denies that the said James Hall executed the said deed of conveyance to the said Theodore W. Bayaud and George D. Bayaud without authority from the said complainant and defendant; that he combined with the said James Hall or any other person to cheat and defraud the said complainant, or had any notice whatsoever of the said Theodore W. Bayaud and George D. Bayaud having combined with the said James Hall to cheat or defraud the said complainant at the time of the said conveyance by the said James Hall to the said Theodore W. Bayaud and George D. Bayaud, or at any time before or after the time when said conveyance was executed.

And this defendant, further answering, says that he admits that the said Theodore W. Bayaud and George D. Bayaud did, on the 30th day of May, A. D. 1867, convey to this defendant the said several lots mentioned in the bill of complainant as conveyed by them to defendant, and defendant says that the said lots were conveyed by the said Theodore W. Bayaud and George D. Bayaud to this defendant in good faith and for a valuable consideration.

And this defendant, further answering, says that the said complainant, by Caleb B. Clements, his attorney in fact, in virtue of a power of attorney executed by the said complainant to the said Caleb B. Clements of the date of the twenty-eighth of August, A. D. 1866, an exemplified copy of which said power of attorney is hereto attached, marked "Exhibit E," and made part of this answer.

And defendant, further answering, says that the said complainant, by Caleb B. Clements, his attorney in fact, conveyed to the said

36 George D. Bayaud and Theodore W. Bayaud lots seventeen (17) and eighteen, (18,) in block one hundred and forty-four, (144;) lots nine (9) and ten, (10,) in block one hundred and fifty-six, (156;) lots three (3) and four, (4,) in block one hundred and seventy-nine, (179;) lots twenty-seven (27) and twenty-eight, (28,) in block two hundred and sixteen, (216;) lots nineteen (19) and twenty, (20,) in block two hundred and sixty-two, (262;) all which said conveyed lots had been conveyed by the said complainant, by James Hall, his attorney in fact, on the third day of August, A. D. 1865, to the said Theodore W. Bayaud and George D. Bayaud, as hereinbefore stated in this answer.

And this defendant, further answering, denies all unlawful combination and confederacy in the said bill charged; without , that any other matter or thing material or necessary for this defendant to make answer thereto, and not herein or hereby well or sufficiently answered unto, confessed or avoided, traversed or denied, is true to the knowledge or belief of this defendant. All which matters and things this defendant

is ready to aver, maintain, and prove, as this honorable court shall direct; and humbly prays to be hence dismissed with his reasonable costs and charges in that behalf most wrongfully sustained.

GUSTAVE F. PERRENOUD,
By AMOS STECK, *his Solicitor.*

AMOS STECK,
Solicitor for Dft.

Power of attorney.—A. H. Clements to C. B. Clements.

(Filed for record August 29th, A. D. 1866, at 6 o'clock p. m.)

37 Know all men by these presents, that I, Alfred H. Clements, of Central City, hereby nominate and appoint Caleb B. Clements, of Denver City, Colorado Territory, my true and lawful attorney in fact, for me and in my name, place, and stead, to bargain, sell, and convey all and singular my interest in and to the S. ½ N. E. ¼ and E. ½ S. E. ¼ of section 34, tow'p 3 S., range 68 west, either in 'hole or part, lot or lots, of any interest thereof, and make, execute, and deliver good and sufficient deed or deeds in my name in fee-simple for the same, and I hereby confirm all and singular the acts and doings of my said attorney in the premises until the same is revoked by me.

Witness my hand and seal this the 28th day of August, A. D. 1866.

Attest:

ALFRED H. CLEMENTS. [SEAL.]

[Internal-revenue stamp of $1.50 attached.]

TERRITORY OF COLORADO,
County of Gilpen, ss:

This day personally came Alfred H. Clements before me, the undersigned, notary public in and for said county and Territory, and acknowledged the signing & sealing of the foregoing power of attorney to be his voluntary act & deed.

Witness my hand & notarial seal this the 28th day of August, 1866.

[NOTARIAL SEAL.] LEWIS C. ROCKWELL,
Notary Public.

TERRITORY OF COLORADO,
County of Arapahoe, ss:

I, Webster D. Anthony, county clerk and ex-officio recorder of
38 Arapahoe County, Colorado, do hereby certify that the above and foregoing is a true and correct copy of a certain instrument of writing filed for record and as recorded on the 29th day of August, A. D. 1866, at 6 o'clock p. m., in book (10) ten of records, on page 118.

In witness whereof I have hereunto set my hand and official seal at Denver City, this 8th day of February, A. D. 1869.

[OFFICIAL SEAL.] WEBSTER D. ANTHONY,
Clerk & Recorder.

[15-cent stamp]

And on the same day, to wit, the tenth day of February, A. D. 1869, came L. A. Maurice, by his attorney, and filed herein his answer to the bill of complaint, which said answer is in words and figures as follows, to wit:

In the district court of the first judicial district of Colorado Territory within & for the county of Arapahoe.

ALFRED H. CLEMENTS, PLFF.,
vs.
JOSEPH P. MACHEBEUF ET AL. DFTS. } In chancery.

THE TERRITORY OF COLORADO,
Arapahoe County, ss:

The answer of Louis Abel Maurice one of the defendants to the bill of complaint of Alfred H. Clements, complainant.

This defendant now, and at all times hereafter, saving and reserving to himself all manner of benefit and advantage of exception to the many errors and insufficiencies in the complainant's bill of com-
39 plaint contained, for answer thereunto, or unto so much or such parts thereof as this defendant is advised is material for him to make answer unto, he answers and says:

That he admits that the said complainant was seized in fee-simple of the land described in the said bill of the complainant, on the 11th day of May, A. D. 1864, as stated by the said complainant. And this defendant, further answering, says that he admits that all the lots in the blocks mentioned in the bill of the said complainant are situate within and form parts of the said land described and mentioned in the said bill of the said complainant, as owned by the said complainant in fee-simple on the 11th day of May, A. D. 1864.

And this defendant, for further answer, says that on the 3d day of August, A. D. 1865, one James Hall, then living, but now deceased, executed a deed of conveyance of divers lots or parcels of land, in virtue of a power of attorney to him, the said Hall, made by the said complainant on the 14th day of June, A. D. 1864, and also in virtue of another power of attorney, executed by the said complainant to the said Hall, dated the 17th day of June, A. D. 1864, which said powers of attorney, respectively, are attached to the answer of Joseph P. Machebeuf to the said bill of the said complainant, and marked Exhibits "A" and "B," which this defendant prays the leave of the court may be made a part of the answer of this defendant to Theodore W. Bayaud and George D. Bayaud, which said lots are mentioned and described in the said bill of the said complainant, amongst which said several lots, so conveyed by the said complainant, by his said attorney in fact, James Hall, to Theodore W. Bayaud and George D. Bayaud aforesaid, were
40 lots numbered nine (9) and ten, (10,) in block one hundred and fifty-six (156,) and also lots numbered nineteen (19) and twenty, (20,) in block two hundred and sixty-two (262.)

And the said defendant, for further answer, says that the said Theodore W. Bayaud and George D. Bayaud, on the 11th day of December, A. D., 1865, conveyed by deed to this defendant said lots nine (9) and ten, (10,) in block one hundred and fifty-six, (156,) and also lots nineteen (19) and twenty, (20,) in block two hundred and sixty-two, (262,) for a good and valid consideration by the said defendant to the said Theodore W. and George D. Bayaud paid.

And this defendant, further answering, says that the deed of conveyance of the said complainant, by the said James Hall to the said Theodore W. Bayaud and George D. Bayaud, of the date of 3d of August, A. D. 1865, was executed by the said James Hall, as attorney in fact for the said complainant, for a valuable consideration and in

good faith, so far as this defendant knows or has ever been informed; and the said conveyance, by deed of the said Theodore W. Bayaud and George D. Bayaud to this defendant, dated the 11th day of December, A. D. 1865, of said lots nine and ten, in block one hundred and fifty-six, and lots nineteen and twenty, in block two hundred and sixty-two, was executed to this defendant in good faith and for a valuable consideration, and without any intent to cheat or defraud the said complainant.

And this defendant, further answering, says that he denies all knowledge of any combination or confederacy on the part of the said Theodore W. Bayaud and George D. Bayaud with the said James Hall, or with any other person or persons whomsoever, to cheat, wrong, or defraud the said complainant in the conveyance so made by the said James Hall, acting as attorney in fact for the said complainant, to the
41 said Theodore W. Bayaud and George D. Bayaud, by his deed of the 3d of August, A. D. 1865, aforesaid; and this defendant denies all knowledge of any fraud or design to cheat the said complainant by means of the conveyance of the said Theodore W. Bayaud and George D. Bayaud, to this defendant, of the date of the 11th day of December, A. D. 1865.

And this defendant, further answering, says that the said complainant executed and delivered to Caleb B. Clements, the father of the said complainant, a power of attorney of the date of 28th day of August A. D. 1866, authorizing and empowering the said Caleb B. Clements to execute deeds of conveyance of the said lots, to wit, lots numbered 9 & 10, in block 156, and lots 19 & 20, in block 262, (amongst others,) to the said Theodore W. Bayaud and George D. Bayaud, an exemplified copy of which said power of attorney is attached to and made part of the answer of Gustave F. Perrenoud, one of the defendants in this suit, as an exhibit, marked "E," and which this defendant prays the court may be made and considered a part of the answer of this defendant.

And this defendant, further answering, saith that the said Caleb B. Clements, in virtue of the authority of the power of attorney aforesaid, executed and delivered to Theodore W. Bayaud and George D. Bayaud a deed of conveyance of, amongst other lots so conveyed, lots nine (9) and ten, (10,) in block one hundred and fifty-six, (156,) and lots nineteen (19) and twenty, (20,) in block two hundred and sixty-two, (262,) being the same lots mentioned and described, amongst others, as having been conveyed *by* the complainant by James Hall, of the date of 3d of August, A. D. 1865.

And this defendant, further answering, denies all unlawful combination and confederacy in the said bill charged; without that any
42 other matter or thing material or necessary for this defendant to make answer unto and not herein or hereby well or sufficiently answered unto, confessed or avoided, traversed or denied, is true to the knowledge or belief of this defendant. All which matters and things this defendant is ready to aver, maintain, and prove, as this honorable court shall direct; and humbly prays to be hence dismissed, with his reasonable costs and charges in that behalf most wrongfully sustained.

LOUIS ABEL MAURICE,
By AMOS STECK, *Solicitor.*

And on the same day, to wit, the tenth day of February, A. D. 1869, came A. J. Williams and others, by their solicitors, and filed herein their answer to the bill of complaint, which said answer is in words and figures as follows, to wit:

THE TERRITORY OF COLORADO,
Arapahoe County, ss:

In the district court of the first judicial district within said Territory and county of Arapahoe. In chancery.

ALFRED H. CLEMENTS, PLFF.,
vs.
JOSEPH P. MACHEBEUF ET AL., DFTS.

The joint and several answers of Andrew J. Williams, John M. M. Larimer, William H. H. Larimer, Edward McClintock, Marcus Walker, Charles G. Chever, Elisha P. Stout, Emma C. Le Fevre, Elizabeth F. Beall, William Lerchen, Charles Lerchen, jr., George W. Kasler, William M. Clayton, Malvina Cunningham, John M. Cunningham, Carlos Gove, and John Mechling, defendants, to the bill of complaint of Alfred H. Clements, complainant.

These defendants, now and all times hereafter, saving and reserving to themselves all manner of benefit and advantage of exception to the many errors and insufficiencies in the complainant's bill of complaint contained, for answer thereunto, or unto so much or such parts thereof as the defendants are advised is material for them to make answer unto, answer and say that they admit that the said complainant, Alfred H. Clements, was, on the 11th day of May, A. D. 1864, the owner in fee simple of the east half of the southeast quarter and the south half of the northeast quarter of section thirty-four (34) in township three (3) south, of range sixty-eight (68) west, according to the survey of the Government of the United States, including the several lots and blocks mentioned in the bill of complaint of the said complainants, and that said land and lots and blocks are situate within the city of Denver, in the county of Arapahoe, & Territory of Colorado, and that said lots and blocks are numbered according to the survey of E. D. Boyd, as stated in the bill of the said complainant.

And these defendants, further answering, say that they admit that on the third day of December, A. D. 1864, one James Hall, then in full life, but now deceased, acted as the agent or attorney in fact of the said complainant, and on his behalf, and in and by virtue and authority of two several powers of attorney, exemplified copies of which said powers of attorney are attached to the answer of Joseph P. Machebeuf, another of the defendants in this case, and are marked, respectively, Exhibits A and B, which these defendants pray the leave of the court to be made and considered a part of this answer of these
44 defendants.

And defendants, further answering, say that they admit that the said James Hall did convey to the several persons mentioned in the bill of complainant the several lots and blocks therein stated, and at the times herein set forth, but deny that the said Hall made said conveyances without authority, as stated in the bill of the said complainant; but said defendants say that the said James Hall, by virtue of the authority and power contained in the two *two* several powers of attorney above mentioned and set forth & referred to, marked, respectively, Exhibits A and B, to the answer of Joseph P. Machebeuf in this suit, did, in the name of the said complainant, at the several times stated in the said bill of complainant, execute and deliver to these defendants deeds of conveyance of the lots respectively set forth in the said bill of

complaint by the said complainant for valuable considerations mentioned in the said several conveyances, and in good faith, and without intending any wrong or injury to the said complainant, or intent to cheat or defraud the said complainant in the premises.

And the said defendants, further answering, say that the several deeds of conveyance, executed and delivered to the several parties and persons mentioned in the said bill of the said complainant at the several times therein stated, were executed and delivered in good faith, and for good and valuable considerations, in said deeds of conveyance mentioned, & for the uses and purposes therein set forth. And the said defendants deny, respectively, that they had any knowledge of any wrong done, or intent on the part of the said Hall, or any other
45 person or persons, to cheat or defraud the said complainant in the said conveyances so executed, and deny any confederacy or combination with the said Hall, or with each other, or any other person or persons, to wrong, cheat, or defraud the said complainant in the execution & delivery of the said several deeds of conveyance mentioned and set forth in the said bill of said complainant.

And the defendants, further answering, say that they admit that they have not reconveyed to the said complainant any of the lots or lands stated in the said bill of complaint, to be owned and possessed by them in virtue of the several deeds of conveyance in said bill of complaint mentioned, and say that they ought not to reconvey the same, as requested in the said bill of the said complainant.

And these defendants deny all unlawful combination and confederacy in the said bill charged, without that, any other matter or things material or necessary for this defendant to make answer unto, confessed or avoided, traversed or denied, is true to the knowledge or belief of these defendants.

All which matters and things these defendants are ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays to be hence dismissed with their reasonable costs and charges in that behalf most wrongfully sustained.

AMOS STECK,
ALFRED SAYRE,
Solicitors for the Defendants.

And on the same day, to wit, the tenth day of February, A. D. 1869, came Theodore W. Bayaud and George D. Bayaud, by their
46 solicitor, and filed herein their answer, which said answer is in words and figures as follows, to wit:

In the district court of the first judicial district of the Territory of Colorado, within and for the county of Arapahoe.—In chancery.

THE TERRITORY OF COLORADO,
Arapahoe County, ss:

The several answers and disclaimers of Theodore W. Bayaud and George D. Bayaud, defendants, to the bill of complaint of Alfred H. Clements, complainant.

These defendants, now and all times hereafter, saving and reserving to themselves all manner of benefit and advantage of exception to the many errors and insufficiencies in the complainant's said bill of complaint contained, for answer thereunto, or unto so much or such parts thereof as these defendants are advised is material for them to make

answer unto, they answer and say, that they admit that the said James Hall, mentioned in the bill of complaint*ant* of complainant, conveyed by deed to these defendants the several lots mentioned and described in the said bill of complaint, under and by virtue of a power of attorney executed by complainant to the said Hall, of the date of June 14, A. D. 1864, an exemplified copy of which power of attorney is filed as an exhibit, marked A, to the answer of Joseph P. Machebeuf in this suit, which these defendants pray this court's leave to be made and considered a part of this answer.

47 And these defendants, answering further, say that the said complainant executed another power of attorney on the 17th day of June, A. D. 1864, authorizing and empowering the said James Hall to sell and convey lots owned by the said complainant, and included within the land mentioned and described in the bill of complainant as conveyed by the patent of the United States to the complainant, which said power of attorney is filed as an exhibit, marked B, in the answer of Joseph P. Machebeuf in this suit, which said exhibit these defendants pray the leave of this honorable court may be made and considered a part of this answer of these defendants; and the said James Hall, in virtue of said power of attorney, for a valuable consideration, conveyed the lots mentioned and described in the bill of complaint of said complainant to these defendants by deed of conveyance dated the 3d day of August, in the year eighteen hundred and sixty-five, (1865,) as stated in the bill of complainant.

And these defendants, answering further, say that the said James Hall, acting as the attorney in fact of the said complainant, was authorized to convey the said mentioned lots to these defendants, and did convey the same in good faith, and without any fraud on the part of these defendants or collusion with the said James Hall, or any person or persons whomsoever.

And these defendants, further answering, say that they conveyed to one Louis Abel Maurice, as stated in the bill of complaint, lots (9) nine and ten, (10,) in block one hundred and fifty-six, (156,) and lots nineteen (19) and twenty, (20,) in block two hundred & sixty-two, (262,) in good faith, and without any intent to cheat or defraud the said complainant in the premises.

48 And the said defendants, further answering, say that by a like deed executed by these defendants they conveyed the residue of the lots mentioned as having been conveyed to these defendants by James Hall as attorney in fact for the complainant on the third (3) day of August, A. D. 1864, as stated in the bill of complainant, to one Gustave F. Perremond, by deed dated the 30th day of May, A. D. 1867, which deed was executed in good faith by these defendants and without any fraud or design to cheat the said complainant in the premises.

And these defendants, further answering, say that they never claimed any right to the premises so conveyed by the said James Hall as attorney in fact by deed dated the 3d day of August, A. D. 1865, but took said premises and conveyed the same as trustee for the said Louis Abel Maurice and the devisées in the last will and testament of one Thomas J. Bayaud, late of New York City, deceased, who was entitled to the same.

And these defendants, further answering, say that they do not now claim to have any interest in the said premises either legal or equitable, and therefore disclaim all right and title of, in, or to the same or any part thereof.

And these defendants deny all unlawful combination and confederacy

in the said bill, charged without; that any other matter or thing material or necessary for these defendants to make answer unto, and not herein or hereby well or sufficiently answered unto, confessed, or avoided, traversed or denied, is true to the knowledge or belief of these defendants. All which matters and things these defendants are ready to aver, maintain, and prove as this honorable court shall direct, and humbly pray to be hence dismissed with their reasonable costs & charges in
49 this behalf most wrongfully sustained.

AMOS STECK,
Solicitor for Defts.

And afterwards, to wit, on the twelfth day of February, A. D. eighteen hundred and sixty-nine, came the said complainant by his solicitors and filed herein his exceptions to the answer of Joseph P. Machebeuf, which said exceptions are in words and figures as follows, to wit:

In the district court of the first judicial district of the Territory of Colorado, in and for the county of Arapahoe, of the January term, 1869. In chancery.

ALFRED H. CLEMENTS
vs.
JOSEPH P. MACHEBEUF ET AL.

TERRITORY OF COLORADO,
County of Arapahoe, ss:

Exceptions taken by the above-named complainant to the separate answer of the defendant, Joseph P. Machebeuf, for insufficiency.

First exception: For that the said defendant sets out in his said answer one power of attorney, marked "Exhibit A," which shows in itself that the power had expired before the deed sought to be cancelled was executed.

Second exception: For that the said defendant does not show that the terms and stipulations made by said complainant, or any of
50 them, were complied with by defendant.

Exception third: For that the said defendant does not show, in and by his said answer, that he had any legal or equitable right to demand or receive from said Hall, as the attorney in fact of complainant, any deed of conveyance for the lots described in said deed.

Exception fourth: For that the said defendant also appends to and makes a part of his answer a copy of another power of attorney, marked "B," and the original deed sought to be cancelled in this proceeding, but does not show under which of said powers the said deed was executed.

Exception fifth: For that the said deed of conveyance is a warrantee-deed, and could not, therefore, have been executed under the said power marked "B," it only authorizing the execution of quit-claim deeds.

Exception sixth: For that the said second power of attorney was not recorded until long after the date of said deed, & therefore cannot be presumed to have been the authority under which said deed was accepted by said defendant.

Exception seventh: For that the said second power of attorney was not recorded at the time of the delivery of said deed.

GEO. W. PURKINS &
BROWNE & MECHLING,
Solis. for Compt.

51 And on the same day, to wit, the twelfth day of February, A. D. 1869, the said complainant, by his solicitors, also filed herein his exceptions to the answer of Andrew J. Williams et al., which said exceptions are in words and figures as follows, to wit:

In the district court of the first judicial district of Colorado Territory, in and for the county of Arapahoe, of the January term, A. D. 1869.—In chancery.

ALFRED H. CLEMENTS
vs.
JOSEPH P. MACHEBEUF ET AL.

TERRITORY OF COLORADO,
County of Arapahoe, ss:

Exceptions taken to the joint answer of Andrew J. Williams, John M. M. Larimer, William H. H. Larimer, Edward McClintock, Marcus Walker, Charles G. Chever, Elisha P. Stout, Emma C. LeFevre, Elizabeth F. Beall, William Lerchen, Charles Lerchen, jr., George W. Kasler, William M. Clayton, Malvina N. Cunningham, John N. Cunningham, and Carlos Gove and John Mechling, defendants, for insufficiency.

First exception: For that the said defendants set out in their said answer a power of attorney, marked "A," which shows of itself that the power had expired before the said several deeds sought to be cancelled had been executed.

Second exception: For that the said defendants do not show
52 that the terms and stipulations made by said complainant, or any of them, were complied with by defendants.

Exception third: For that the said defendants do not show in and by this said answer that they had any legal or equitable right to demand or receive from said Hall, as the attorney in fact of complainant, any deed of conveyance for the lots in said several deeds described.

Exception fourth: For that the said defendants also append to, and make part of their answer, a copy of another power of attorney marked "B," but do not show under which of said powers of attorney the said deeds were executed.

Exception fifth: For that the said deeds of conveyance are all warrantee-deeds, and could not therefore have been executed under the said power marked "B," it only authorizing the execution of deeds of quit-claims.

Exception six: For that the said second power of attorney was not recorded until long after the dates of said deeds, and therefore it cannot be presumed to have been the authority under which said deeds were made or accepted by said defendant.

GEO. W. PURKINS &
BROWNE & MECHLING,
Solis. for Compt.

And afterwards, to wit, on the thirtieth day of March, A. D. eighteen hundred and sixty-nine, the same being one of the regular days of the March term A. D. eighteen hundred and sixty-nine, the follow-
53 ing proceedings were had and entered of record in said cause, to wit:

ALFRED H. CLEMENTS
vs.
JOSEPH P. MACHEBEUF ET AL. } In chancery.

Now on this day come Messrs. Amos Steck, J. Bright Smith, E. L.

Smith, and Alfred Sayre, and withdraw their appearance as the solicitors of said defendant, John H. Hutchinson, by leave of court for that purpose given. And thereupon comes the said complainant by Messrs. George W. Purkins, and Browne and Mechling, his solicitors, and moves the court that the bill of complaint in the cause be dismissed as to the said defendants, Theodore W. Bayaud, George D. Bayaud, Gustavus F. Perrenoud, and L. A. Maurice. It is therefore considered by the court that the said bill of complaint in this cause be dismissed so far as the same relates to said defendants, Theodore W. Bayaud, George D. Bayaud, Gustavus F. Perrenoud, and L. A. Maurice, and that they, the said defendants, Theodore W. Bayaud and George D. Bayaud, Gustavus F. Perrenoud, and L. A. Maurice, recover of the said complainant their costs by them in this behalf laid out and expended, taxed at, and have execution therefore.

And on the same day, to wit, the thirtieth day of March, A. D. 1869, the following proceedings were had and entered of record in said cause, to wit:

ALFRED H. CLEMENTS
vs.
JOSEPH P. MACHEBOEUF ET AL. } In chancery.

54 This day came the complainant, by Geo. W. Purkins and Browne & Mechling, his solicitors, none appearing for the said defendant, John H. Hutchinson, and the said John H. Hutchinson having been duly notified of the pendency of this suit, in pursuance of the statute in such case made and provided, by publication more than ten days before the first day of the January term of said court, A. D. 1869, and the said defendant, John H. Hutchinson, having been three times solemnly called in open court to plead, answer, or demur to said plaintiff's bill of complaint, came not, but herein made default; and the court having ordered that the said bill, as to the said defendant, John H. Hutchinson, be taken pro confesso; and thereupon the said cause coming on to be heard upon the said bill so taken as confessed, and the exhibits thereto, and the court being fully advised in the premises, do find the equity of said cause, as to said defendant, to be with the complainant, and that the said conveyance by the said James Hall to the said John H. Hutchinson, dated October 4th, A. D. 1864, described in said bill of complaint for lots (21 & 22) twenty-one and twenty-two, in block (251) two hundred and fifty-one; lots (25 & 26) twenty-five and twenty-six, in block (225) two hundred and twenty-five; lots (7 & 8) seven and eight, in block (320) three hundred and twenty; lots (11 & 12) eleven and twelve, in block (297) two hundred and ninety-seven; & lots (29 & 30) twenty-nine and thirty, in block (145) one hundred and forty-five, is fraudulent and void, and made without authority and without consideration.

It is therefore ordered, adjudged, and decreed by said court that the said deed of conveyance made by the said James Hall, as the
55 attorney in fact of the complainant, to the said John H. Hutchinson, for the said town-lots, be, and the same is hereby, wholly cancelled and annulled, and the said town-lots hereinbefore described, are restored to the said complainant, divested of all pretended claim thereto in favor of the said John H. Hutchinson by virtue of said deed of conveyance, and that the said John H. Hutchinson do pay the costs of said

cause, to be taxed by the clerk of said court, and in default of such payment within ten days from this date, that execution and fee-bills issue therefor.

By the court.

C. S. EYSTER.

MARCH 30th, 1869.

And on the same day, to wit, the thirtieth day of March, A. D. 1869, the following proceedings were had, and entered of record in said cause, to wit:

ALFRED H. CLEMENTS
vs.
JOSEPH P. MACHEBEUF ET AL. } In chancery.

Now on this day came on to be heard the exceptions of said complainant to the seperate answer of said defendant Machebeuf, and also the exceptions of said complainant to the joint answer of the defendants, Andrew J. Williams, John M. M. Larimer, William H. H. Larimer, Edward McClintock, Marcus Walker, Charles G. Chever, Elisha P. Stout, Emma C. LeFevre, Flizabeth F. Beall, William Lerchin, Chas. Lerchin, jr., George W. Kasler, William M. Clayton, Malvina N. Cunningham, John N. Cunningham, Carlos Gove, and John Mechling, and there-
56 upon came the said complainant, by George W. Purkins and S. E. Browne, esqrs., his solicitors; and the said defendant Machebeuf, by Amos Steck and J. Bright Smith, esqrs., his solicitors, also came, and the other defendants above named also came, by Amos Steck and Alfred Sayre, esqr., their solicitors, and the said exceptions were argued by counsel, after which the matter was held under advisement by the court.

And afterwards, to wit, on the first day of April, A. D. eighteen hundred and sixty-nine, the same being still one of the regular days of the March term, A. D. 1869, the following proceedings were had and entered of record in said cause, to wit:

ALFRED H. CLEMENTS
vs.
JOSEPH P. MACHEBEUF ET AL. } In chancery.

Now on this day, the court having heretofore taken the exception of the said complainant to the separate answer of said defendant Joseph P. Machebeuf under advisement, after the arguments of counsel thereon, and the court being fully advised in the premises, it is considered by the court that the first four of the said exceptions to the answer of said defendant Machebeuf be sustained, and the fifth, sixth, and seventh of said exceptions be overruled; and thereupon the said defendant Machebeuf, by Messrs. J. Bright Smith and Amos Steck, his solicitors, prays leave of court to amend his said answer, and to him it is granted.

And the court having taken the exception of said complainant
57 to the joint answer of said defendants Andrew J. Williams, John M. M. Larimer, William H. H. Larimer, Edward McClintock, Marcus Walker, Charles G. Chever, Elisha P. Stout, Emma C. LeFevre, Elizabeth F. Beall, William Lerchin, Charles Lerchin, jr., George W. Kasler, William M. Clayton, Malvina N. Cunningham, John N. Cunningham, Carlos Gove, and John Mechling under advisement, and the court being

fully advised in the premises, it is considered by the court that the first four of the said exceptions be sustained, and the fifth and sixth of said exceptions be overruled; and thereupon the said defendants last above named, by Messrs. Amos Steck and Alfred Sayre, their solicitors, pray leave of court to amend their said answer, and to them it is granted.

And afterwards, to wit, on the nineteenth day of April, A. D. eighteen hundred and sixty-nine, the same being still one of the regular days of the March term, A. D. 1869, the following proceedings were had and entered of record in said cause, to wit:

ALFRED H. CLEMENTS
vs.
JOSEPH P. MACHEBUEF ET AL. } In chancery.

Now on this day comes Alfred Sayre, esq., one of the solicitors for said defendants Carlos Gove, John N. Cunningham, and Malvina N. Cunningham, and prays leave of court to withdraw his appearance as such solicitor on behalf of the said defendants Carlos Gove, John N. Cunningham, and Malvina N. Cunningham, together with the joint demurrer of said John N. Cunningham, Carlos Gove, and Malvina
58 N. Cunningham, and others, so far as the same relates to the said John N. Cunningham, Carlos Gove, and Malvina N. Cunningham, the said appearance having been entered through mistake, and to him it is granted; and thereupon, on motion of Messrs. S. E. Browne and Geo. W. Purkins, the complainant's solicitors, the said defendants John N. Cunningham, Malvina N. Cunningham, and Carlos Gove were ruled to file their amended answer to the bill of complaint in this cause on or before the incoming of court on to-morrow morning, April the twentieth instant.

And afterwards, to wit, on the twentieth day of April, A. D. 1869, the same being still of the March term, A. D. 1869, the following proceedings were had and entered of record in said cause, to wit:

ALFRED H. CLEMENTS
vs.
JOSEPH P. MACHEBEUF ET AL. } In chancery.

Now on this day comes the said complainant, by Messrs. S. E. Browne and George W. Purkins, his solicitors, and moves the court that the bill of complaint in this cause be taken as confessed against the said defendants John N. Cunningham, Malvina N. Cunningham, and Carlos Gove, for failure to comply with the rule of this court herein entered against them, the said defendants John N. Cunningham, Malvina N. Cunningham, and Carlos Gove, to file their amended answer to the bill of complaint in this cause on or before the incoming of court on this day.

And it appearing to the court that the said defendants John N. Cunningham, Malvina N. Cunningham, and Carlos Gove have failed
59 to comply with the said rule of this court on them to file their amended answer to the bill of complaint in this cause, it is considered, ordered, and decreed by the court that the bill of complaint in this cause be, and it is hereby, taken as confessed by the said defendants John N. Cunningham, Malvina N. Cunningham, and Carlos Gove.

And afterwards, to wit, on the twenty-second day of April, A. D. eighteen hundred and sixty-nine, came Joseph P. Machebeuf, one of the

said defendants, by his solicitors, and filed herein his amended answer to the bill of complaint; which said amended answer is in words and figures as follows, to wit:

In the district court of the first judicial district of the Territory of Colorado, within and for the county of Arapahoe, on the chancery side thereof.

Before Hon. Christian S. Eyster, judge of 1st judicial district.

TERRITORY OF COLORADO,
County of Arapahoe, ss:

The amended answer of Joseph P. Machebeuf, one of the defendants, to the bill of complaint of Alfred H. Clements, complainant.

This defendant, now and at all times saving and reserving to himself all manner of benefit and advantage to the many errors and insufficiencies in the complainant's said bill of complaint contained, for answer thereunto, or unto so much or such parts thereof as this defendant is advised is material for him to make answer unto, answers and says: That he admits that the said complainant, Alfred H. Clements, was, on the 11th day of May, A. D. 1864, the owner in fee-simple of the east
60 half of the southeast quarter & the north half of the northeast quarter of section thirty-four (34) in township three (3) south, of range sixty-eight (68) west, including block numbered two hundred and fourteen, (214,) and also lot twenty- (22) in block two hundred and sixteen, (216,) in the east division of the city of Denver, according to the survey of said city as made by one E. D. Boyd, as stated in the bill of the complainant.

And this defendant, further answering, admits that on the third day of December, A. D. 1864, one James Hall (then living, but now deceased) acted as the agent or attorney in fact of the said complainant and on his behalf, and in and by virtue of two several powers of attorney, the said James Hall did convey to this defendant by deed, as attorney in fact for complainant, for & in consideration of the sum of twelve dollars, paid by this defendant to the said Hall, the following-described lots or parcels of land, being part or a portion of the east half of the southeast quarter, and the south half of the northeast quarter of section thirty four, (34,) in township three (3) south, of range sixty-eight (68) west, as stated in the bill of complaint, to wit: Lots one, (1,) two, (2,) three, (3,) four, (4,) five, (5,) six, (6,) seven, (7,) nine, (9,) ten, (10,) eleven, (11,) twelve, (12,) thirteen, (13,) fourteen, (14) fifteen, (15,) sixteen, (16,) seventeen, (17,) eighteen, (18,) nineteen, (19,) twenty one, (21,) twenty-two, (22,) twenty-three, (23,) twenty-four, (24,) twenty-five, (25,) twenty-six, (26,) twenty-seven, (27,) twenty-eight, (28,) twenty-nine, (29,) thirty, (30,) thirty-one, (31,) and thirty-two, (32,) in block two hundred and fourteen, (214,) and lot twenty-two, (22,) in block two hundred and sixteen.

And this defendant, further answering, denies that the said James
61 Hall conveyed to this defendant the said mentioned and described lots without any authority from the said complainant, but confesses that lots eight (8) and twenty, (20,) in said block two hundred and fourteen, (214,) were not conveyed to this defendant by the complainant or by his agent, James Hall, under any authority, and this defendant does not now, & never did, claim to own the said described lots eight (8) and twenty, (20,) in block two hundred & fourteen aforesaid.

And this defendant, further answering, denies that he combined with the said James Hall or any other person or persons whomsoever, to cheat, wrong, or defraud the said complainant by means of the conveyance stated to have been made by the said Hall to this defendant as stated in the bill of complaint, but this defendant says that the said complainant, Alfred H. Clements, on the 14th day of June, A. D. 1864, executed a power of attorney to the said James Hall, the same being the power of attorney a copy whereof is appended to this defendant's answer heretofore filed, (& to which this answer is amendatory,) marked "Exhibit A," and which the defendant prays m'y also be considered a part of this answer; that by said power of attorney the said complainant authorized & empowered the said James Hall, (upon the performance & fulfillment of certain terms & conditions in said power of attorney set forth & prescribed, & the terms & requirements of a certain bond mentioned in said power of attorney; which bond was executed by the complainant to Hiram J. Brendlinger, the mayor of Denver, in trust for the citizens thereof, & dated June, A. D. 1864,) to execute & deliver good and sufficient deed or deeds for certain town-lots therein mentioned, embracing among others the town-lots hereinbefore men-
62 tioned & described, to any person or persons applying for the same within three months from the date of the bond in the said power of attorney mentioned.

And this defendant, further answering, charges and says that within three months from the date of the bond referred to in the said power of attorney, he applied for & demanded a deed for the said several lots herein before mentioned & described, the same being part & parcel of the town-lots which the said Hall was authorized & empowered to deliver & execute deeds for, under said power of attorney, and that this defendant complied with & fulfilled all & every the terms, conditions, & requirements of the said power of attorney and the bond therein mentioned, and that the said James Hall acted upon this defendant's said application & demand, pursuant to the terms of said power of attorney, and pronounced & decided in favor of the same, and this defendant was thereupon entitled to have & receive from the said Hall a deed for the said several lots herein before mentioned & described, in accordance with the power of attorney aforesaid.

And this defendant, further answering, says, that after the execution by the complainant of said first power of attorney, to wit: on the 17th day of June, A. D. 1864, the said complainant executed another power of attorney to the said James Hall, which last-mentioned power of attorney is the same of which a copy is appended to this defendant's answer, heretofore filed, & therein marked "Exhibit B," & which this defendant prays may also be considered a part of this answer, by which the said complainant authorized & empowered the said Hall to convey all the lands, hereditaments, & real estate, to or in which the said complainant was or might be entitled or inter-
63 ested, within the county of Arapahoe & Territory of Colorado, for such sum or price and on such terms as to the said Hall should seem meet.

And the defendant, further answering, says that the said James Hall, under and by virtue of the power & authority upon him conferred in the powers of attorney aforesaid, which are set forth in said Exhibits A & B, conveyed to this defendant the said several lots herein before mentioned & described, for a valuable consideration, and this defendant admits that he now holds the said lots in blocks two hundred & fourteen & two hundred and sixteen, conveyed to this defendant by

the said James Hall, as attorney in fact of the said complainant, and this defendant admits that he has not conveyed the said real estate & lots to the complainant, but claims to own the same by virtue of the conveyance mentioned in the complainant's bill, which deed of conveyance is the same, a copy whereof is appended to this defendant's answer, heretofore filed, & marked "C," and which this defendant prays may also be considered a part of this amended answer.

And this defendant denies all unlawful combination & confederacy in the said bill charged, without that any other matter or thing material or necessary for this defendant to make answer unto, confessed or avoided, traversed or denied, is true, to the knowledge or belief of this defendant. All which matters and things this defendant is ready to aver, maintain, & prove as this honorable court shall direct; and humbly prays to be hence dismissed, with his reasonable costs & charges in that behalf most wrongfully sustained.

JOSEPH P. MACHEBOEUF,
P'r AMOS STECK,
His Solr's.

ALFRED SAYRE,
J. BRIGHT SMITH,
AMOS STECK,
Solic's for D'f't.

And afterwards, to wit: On the twenty-eighth day of April, A.
64 D. eighteen hundred and sixty-nine, came the said complainant, by his solicitors, and filed herein his exceptions to the amended answer of Joseph P. Machebeuf, which said exceptions are in words and figures as follows, to wit:

In the district court, 1st judicial district, Arapahoe County, May term, A. D. 1869.—In chancery.

ALFRED H. CLEMENTS
vs.
JOSEPH P. MACHEBEUF ET AL.

TERRITORY OF COLORADO,
County of Arapahoe, ss:

Exceptions to the amended answer of Joseph P. Macheboeuf, one of the defendants to the bill of complaint of said complainants.

And now comes the said complainant, by Browne & Mechling, his solicitors, and excepts to the answer of the said defendant for the following causes:

First. Because said answer does not state & show under which of the said powers of attorney appended to and made part of said answer the said defendant claims title to said lots.

Second. Because the said first power of attorney in said answer, marked "A," had expired by its own limitation long before the execution of said deed.

Third. Because the said second power of attorney, marked "B," only authorizes the execution of a quit-claim deed, and the deed of the said James Hall to said defendant is a deed with covenants of war-
65 ranty.

Fourth. Because a certain *land* from the complainant to one H.

J. Brendlinger is referred to in said answer, but no copy thereof is given and no description of its contents, so as to inform the court of its terms and conditions.

Fifth. The consideration named in said deed shows that the said deed was executed under the first power of attorney, which had expired long before the date of said deed.

Sixth. Because said answer does not show that the said power of attorney had been recorded before the date of said deed, or that they had ever been recorded.

BROWNE & MECHELING,
Solr's for Comp't.

And afterwards, to wit, on the fourth day of May, A. D. eighteen hundred and sixty-nine, came Andrew J. Williams et al., by their solicitors, and filed herein their joint answer to the bill of complaint, which said joint answer is in words and fignres as follows, to wit:

In the district court of the first judicial district of the Territory of Colorado, sitting within and for the county of Arapahoe, of the May term, A. D. 1868.

ALFRED H. CLEMENTS
vs.
JOSEHH P. MACHEBEUF ET AL.

TERRITORY OF COLORADO,
County of Arapahoe, ss:

66 The joint and several answers of Andrew J. Williams, John M. M. Larimer, William H. H. Larimer, Edward McClintock, Marcus Walker, Charles G. Chever, Elisha P. Stout, Emma C. Le Fevre, Elizabeth F. Beall, William Lerchin, Charles Lerchin, jr., George W. Kasler, William M. Clayton, and John Mechling, some of the defendants, to the bill of complaint of Alfred H. Clements, complainant.

These defendants, reserving to themselves all right of exception to the said bill of complaint, for answer thereto, or to so much and such parts thereof as these defendants are advised it is material or necessary for them to answer, answering, say that they admit that said complainant was, on the 11th day of May, A. D. 1864, the owner in fee-simple of the tract of land mentioned and set forth in said bill of complaint, as is in the said bill of complaint alleged, and that the several and various town lots mentioned and set forth in said bill of complaint as being within and a part of said tract of land are a part and parcel of said tract, as the said complainant in his said bill avers.

And these defendants also admit that, at the several and respective times stated in said bill of complaint, one James Hall, acting as attorney in fact of the said complainant, made, executed, acknowledged, and delivered, for and in the name of the said complainant, the several and respective conveyances in said bill of complaint mentioned, to the said defendants Andrew J. Williams, John M. M. Larimer, William H. H. Larimer, Edward McClintock, Marcus H. Walker, Charles G. Chever, Elisha P. Stout, Elizabeth F. Beall, and Emma C. Le Fevre, for the respective town lots in said conveyance and in said bill described;

67 but these defendants deny that the said James Hall, in the making of the said conveyances as the attorney in fact of said complainant,

acted, and the conveyances aforesaid were made, by the said James Hall, without authority from the said complainant. And these defendants deny that the said last-named defendants, in the obtaining of the said conveyances, combined with the said James Hall, or any other person, to cheat and defraud the said complainant; but, on the contrary, these defendants aver and charge the fact to be that when the said conveyances were made, the said James Hall had full rights and legal authority to make said deeds in the name of the said complainant, and was the duly authorized agent or attorney in fact of the complainant for that purpose. And the said last-named defendants received their deeds, respectively, in good faith, and in the due execution by the said James Hall of the authority vested in him by the said complainant, which said authority of the said James Hall to make said conveyances is hereinafter specifically set forth.

And these defendants, further answering, say that they admit that after the said complainant (by James Hall, his attorney in fact,) had so conveyed the said lots to the said defendants last named, the several and respective conveyances mentioned in said bill as being afterwards made, were made to the person and at the times mentioned in said bill; but they deny that said conveyances last referred to were made with the intent to cheat and defraud, but charge the fact to be that after the said complainant by his said attorney had conveyed the said lots to the said defendants Williams, Larimers, McClintock, Walker, Chever, Stout, Le Fevre, and Beal, respectively, the said complainant had no interest in or title to said lots, or to any of them, or any concern in the subsequent disposition of them, or any one of them; that said last conveyances were made in good faith, and for valuable considerations paid by the respective grantees, and without notice that *that* the said complainant had, or pretended to have, any claim to said lots, or any of them.

68

And these defendants, further answering, say they admit that the said lots so as aforesaid conveyed by the several conveyances mentioned in said bill have not been reconveyed to the said complainant by these defendants, or by any of them; and these defendants say that they ought not to be called upon to convey the said lots, or any of them, to the said complainant.

And these defendants, further answering, say that on the 14th day of June, A. D. 1864, the said complainant made, executed, acknowledged, and delivered to the said James Hall (then living, but now deceased,) a certain power of attorney, bearing date on that day, by which said power of attorney the said complainant authorized and empowered the said James Hall, in the name, place, and stead of the said complainant, to act upon the application and demand of any person or persons actually owning and showing the same by abstracts of title properly certified to by the county clerk of the said county of Arapahoe, for deeds to town lots in the city of Denver, situated within the said tract or parcel of land mentioned in said bill of complaint, and upon the payment of the sum of forty cents for each and every lot so claimed, and the payment of further expenses of making, acknowledging, and delivering deeds. and all other expenses required or in accordance with the tenor and effect of a certain bond executed by the said complainant to one Hiram J. Brendlinger, mayor of Denver, in trust for the citizens of Denver, (which said bond in said power of attorney is alleged to bear date June, 1864,) and upon the fulfillment of the said conditions and the conditions of said bond, to make, execute, and deliver good and sufficient deed or deeds, with covenants of warranty to any and all per-

69

son or persons who should apply for the same within three months from the date of said bond; a copy of which said power of attorney is affixed to the original answer of Joseph P. Machebeuf, one of the defendants to the said bill of complaint, who answers separately, and which said copy of said power of attorney these defendants pray may be taken as a part of this answer, the same being marked as Exhibit A in the answer of the said Machebeuf.

And these defendants, further answering, say that thereafter, and on the seventeenth day of June, A. D. 1864, the said complainant made, executed, acknowledged, and delivered to the said James Hall another power of attorney bearing date the day and year last aforesaid, in and by which power of attorney the said complainant made and constituted the said James Hall his attorney in fact, in his name, place, and stead, to enter into and take possession of all such land, tenements, hereditaments, and real estate whatever in said county of Arapahoe, to or in which the said complainant was then or thereafter might be in any way entitled or interested, and to grant, bargain, and sell the same or any part or parcel thereof, and in the name of the said complainant to make, execute, acknowledge, and deliver good and sufficient quit-claim deeds for the same; a copy of which said power of attorney is affixed to the said original answer of Joseph P. Machebeuf heretofore referred to as an exhibit, marked "B," and which said copy these defendants pray may be taken as part of this answer.

70 And these defendants say that the said defendants Andrew J. Williams, John M. M. Larimer, William H. H. Larimer, Edward McClintock, Marcus Walker, Charles G. Chever, Elisha P. Stout, Elizabeth F. Beal, and Emma C. Le Fevre, at and before the date of the first of said powers of attorney were severally equitable owners of certain town lots in the said tract of land mentioned in said bill of complaint as being owned in fee-simple by the said complainant on the 11th day of May, 1864, the said defendants having acquired their said ownership to said lots from the Denver City Town Company, and by the possession and occupancy thereof; and the said complainant having then acquired his legal title to said tract of land embracing said lots by pre-empting the same under the laws of the United States. And these defendants further say that the said tract of land so pre-empted by the said complainant was in fact occupied and improved as a part of the town-site of the city of Denver and had been surveyed into lots, blocks, streets, and alleys, and had been mapped as a part of the said town-site, and that all lots therein here severally claimed as a part of the town-site of the city of Denver by various and a large number of persons, among whom were the defendants in this answer last named, all of which was well known by the said complainant before and at the time when he pre-empted the said tract of land; that the said complainant promised and agreed that if permitted to pre-empt said land without opposition on the ground and for the reason that the same was occupied as a town-site and therefore not subject to pre-emption for agricultural purposes, he, the said complainant, would, after he had so pre-empted, convey to all persons claiming lots within the said tract who would produce abstracts of title to the same showing a chain of conveyance from the Denver City Town Company, and who would pay the proper and

71 necessary expenses of the making and delivery of deeds to the said persons so claiming lots; that in pursuance of such agreement and understanding the said complainant on the day of , 1864, did pre-empt the said tract of land at the land-office of the land-district of Colorado, and thereafter did enter into a bond to Hiram J. Brendlinger, then mayor

of the city of Denver, in trust for the citizens of Denver, in and by which bond the complainant bound himself to convey the lots within said tract to the persons properly claiming the same, which said bond is the one referred to in the first of said powers of attorney in this answer mentioned and referred to.

And these defendants further say that they cannot give in detail, or with more *practicularity* the contents of the said bond, for the reason that they are unable to make inspection or produce the same; that after diligent inquiry for the said bond of the said Hiram J. Brendlinger, and of his successors in office as mayor of the said city of Denver, and of all other persons whom these defendants had any reason to suppose had any knowledge, information, or belief of the whereabouts of the said bond, they are unable to obtain the same, or even to learn that the said bond is now in existence; that for the purpose of the more conveniently carrying out his agreement, as above stated, to make conveyance of town-lots situated within said tract of land, the said complainant made and executed the said powers of attorney above referred to in this answer, whereby he made the said James Hall, then the probate judge of said county of Arapahoe, and as such well known to the citizens of Denver, his attorney in fact, for the purpose of executing for the said complainant such deeds and conveyances which he should by reason of the premises make for lots in said tract of land; that the said James Hall announced and

72 published himself as the agent of the said complainant for the purposes aforesaid immediately after his appointment as such by the said complainant; and that thereafter and within three months from the date of said bond the said defendants in this answer last named did make application to the said James Hall for their several deeds or conveyances to the lots, which in said bill are stated to have been conveyed to them by said Hall, as agent of the complainant, at the same time fully complying with all conditions mentioned in said first power of attorney; that the said James Hall then passed upon their said applications for said conveyances and pronounced them to be satisfactory in every respect, and took from the said named defendants the abstracts which they had produced, and retained the same; made memoranda of the lots which were to be conveyed to said defendants; demanded and received of the said defendants all sums of money which they were severally to pay for said conveyances, and generally all things here done by the said James Hall as agent for the said complainant, and by the said defendants as applicants for the title to lots in said tract of land, which by said first power of attorney and by said bond were required to be done; that the said Hall did not then make, execute, and deliver deeds to said lots, but said he would thereafter execute such deeds and deliver the same to the said defendants. And the said James Hall then, and for the declared purpose of satisfying the said defendants that he was not restricted by the said complainant to any specified time within which he should execute said deeds, exhibited to the said defendants the power of attorney secondly referred to in this answer, and declared his intention to have the same placed upon the records of the recorder's office of the said county of Arapahoe.

73 And the defendants, further answering, further say, that afterwards, and at the respective times named in said bill of complaint, the said complainant, by his said attorney in fact, James Hall, did make, execute, acknowledge, and deliver to the said defendants in this answer last named the several deeds in said bill stated to have been made and delivered to them, respectively. And these defendants claim that the said James Hall was empowered fully by either of said

powers of attorney to make, execute, acknowledge, and deliver said deeds, but whether in the making thereof he deemed himself to be acting under the one and not under the other, these defendants cannot state, nor have they any information or belief beyond the fact, that when said application for deeds were made, he, the said Hall, declared that he was empowered to make said deeds by both of said powers of attorney.

And these defendants deny all unlawful combination and confederacy in said bill charged, without this, that any other matter or thing material or necessary for these defendants to make answer unto, confess or avoid, traverse or deny, is true to the knowledge, information, or belief of these defendants. All which matters and things these defendants are ready to aver, maintain, and prove as this honorable shall direct, and these defendants humbly pray to be hence dismissed with their reasonable costs and charges in this behalf sustained.

AMOS STECK,
ALFRED SAYRE,
Solicitors for the said Defts.

And afterwards, to wit, on the fifth day of May, A. D. eighteen hundred and sixty-nine, came the said complainant, by his solicitors, and filed herein his exceptions to the answer of Andrew J. Williams,
74 et al., which said exceptions are in words and figures as follows, to-wit:

In the district court of the first judicial district of Colorado Territory, in and for the county of Arapahoe, of the May term, A. D. 1868, in chancery.

ALFRED H. CLEMENTS
vs.
JOSEPH P. MACHEBOEUF ET AL.

TERRITORY OF COLORADO,
County of Arapahoe, ss:

And now comes the said complainant, by Browne & Mechling, his solicitors, and excepts to the joint and several answers of the said Andrew J. Williams et al. to the said bill of complaint, and for causes for said exceptions shows the following, to wit:

First. Because it does not appear in and by said answer under & by virtue of which of the two several powers of attorney, copies of which are appended to the said answers and made a part thereof, the said several deeds were executed.

Secondly. Because the said defendants show by their said answer that said deeds were not executed under and by virtue of the power of attorney the copy of which is marked "A," and that said deeds could not have been executed by virtue of the said second power of attorney.

75 Thirdly. Because said defendants do not show any equitable title in themselves or either of them to any conveyances for said lots.

Fourthly. Because said defendants do not show, in and by their said answer, that said powers of attorney have ever been recorded.

Fifthly. Because said answer does not show what the terms of said bond to said H. J. Bredlinger were, or that they were in any way complied with by said several defendants.

Sixthly. Because the said first power of attorney is misrecited in the

body of said answer, the said defendants averring that said power of attorney authorized the said James Hall to convey lots in said tract to persons who should apply for the same within three months from its date, when the power of attorney itself shows that such conveyance could only be made within three months from its date.

Seventhly. Said first power of attorney authorizes the execution of deeds with covenants of warranty, on the payment of certain sums, and said deeds contain covenants of warranty & a consideration in each in pursuance of said powers, and the said second power of attorney only authorizes a conveyance by deed of quit claim, and because said answer is in other respects uncertain and indef*f*inite, etc.

Wherefore the complainant doth except thereto, & prays that defendants may be compelled to amend the same & make full answers to said bill.

76 BROWNE & MECHLING,
Sols. for Complt.

And afterwards, to wit, on the twenty-second day of May, A. D. eighteen hundred and sixty-nine, the same being one of the regular days of the May term, A. D. eighteen hundred and sixty-nine, the following proceedings were had and entered of record in said cause, to wit:

ALFRED H. CLEMENTS
vs.
JOSEPH P. MACHEBEUF ET AL. } In chancery.

Now on this day comes the said complainant, by Messrs. S. E. Browne and George W. Purkins, his solicitors, and the said defendant Machebeuf also comes, by Amos Steck, J. Bright Smith, and Alfred Sayre, his solicitors; and thereupon came on to be heard the exceptions of said complainant to the amended answers of said defendant Machebeuf, and the said exceptions were argued by counsel, after which the matter was held under advisement by the court.

And afterwards, to wit, on the ninth day of November, A. D. eighteen hundred and sixty-nine, the same being one of the regular days of the October term, A. D. eighteen hundred and sixty-nine, the following proceedings were had and entered of record in said cause, to wit:

ALFRED H. CLEMENTS
vs.
JOSEPH P. MACHEBEUF ET AL. } In chancery.

77 And now on this day comes the said complainant, by Messrs. S. E. Browne and Geo. W. Purkins, his solicitors, and said defendants, by Alfred Sayre, esq., their solicitor; and thereupon comes on to be heard the exceptions of the said complainant to the amended answer of the defendants Andrew J. Williams, John M. M. Larimer, William H. H. Larimer, Edward McClintock, Marcus Walker, Charles G. Chever, Elisha P. Stout, *Edward* C. Le Fevre, Elizabeth F. Beall, William Lerchin, Charles Lerchin, jr., George W. Kasler, William M. Clayton, and John Mechling; and the said exceptions were argued by counsel until the hour of adjournment, when the further hearing of argument was postponed until to-morrow, the tenth instant.

And afterwards, to wit, on the tenth day of November, it being still of the October term, A. D. eighteen hundred and sixty nine, the following proceedings were had and entered of record in said cause, to wit:

ALFRED H. CLEMENTS
vs.
JOSEPH P. MACHEBEUF ET AL. } In chancery.

Now on this day comes the said complainant, by Messrs. S. E. Browne and George W. Purkins, his solicitors, and the said defendants, Andrew J. Williams, John M. M. Larimer, William H. H. Larimer, Edward McClintock, Marcus Walker, Charles G. Chever, Elisha P. Stout, *Edward* C. Le Fevre, Elizabeth F. Beall, William Lerchin, Charles Lerchin, jr., George W. Kasler, William M. Clayton, and John Mechling, also come, by their solicitors Alfred Sayre and Amos Steck; and thereupon
78 the further hearing of argument on the exceptions of the said complainant to the amended answer of the said defendants comes on to be heard. After the conclusion of the argument, the matter is held under advisement by the court.

And afterwards, to wit, on the sixteenth day of December, A. D. eighteen hundred and sixty-nine, it being still of the October term, A. D. eighteen hundred and sixty-nine, the following proceedings were had in said cause, to wit:

ALFRED H. CLEMENTS
vs.
JOSEPH P. MACHEBEUF ET AL. } In chancery.

Now on this day, the court having heretofore taken the exceptions of the said complainant to the answer of Andrew J. Williams, John M. M. Larimer, Wm. H. H. Larimer, Edward McClintock, Marcus Walker, Charles G. Chever, Elisha P. Stout, *Edward* C. Le Fevre, Elizabeth F. Beall, William Lerchin, Charles Lerchin, jr., George W. Kasler, *George* M. Clayton, & John Mechling under advisement; and the court being fully advised in the premises, it is considered by the court that the said exceptions be overruled. And thereupon the complainant asks time, and until the first day of next term, to reply; and time to him is granted.

And on the same day, to wit, the sixteenth day of December, A. D. eighteen hundred and sixty-nine, came the said complainant, by his solicitors, and filed herein his replication to the answer of Machebeuf, which said replication is in words and figures as follows, to wit:

79 In the district court of the first judicial district of Colorado Territory, in and for the county of Arapahoe, to the May term, A. D. 1868, in chancery.

ALFRED H. CLEMENTS
vs.
JOSEPH P. MACHEBEUF ET AL. }

TERRITORY OF COLORADO,
Arapahoe County, ss:

The replication of Alfred H. Clements, complainant, to the answer of Joseph P. Machebeuf, one of the defendants.

The complainant, saving and reserving to himself all and all manner of advantage of exception to the manifold insufficiencies of the said

answer, for replication thereto, says that he will aver and prove his said bill to be true, certain, and sufficient in law to be answered unto, and that the said answer of the defendant is uncertain, untrue, and insufficient to be replied unto by this complainant; without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, confessed, and avoided, traversed or denied, is true; all of which matters and things this complainant is and will be ready to aver and prove, as this honorable court shall direct, and humbly prays as in and by his said bill he hath already prayed.

ALFRED H. CLEMENTS,
By BROWNE & MECHLING &
GEO. W. PURKINS,
His Solicitors.

80 And on the same day came the said complainant, by his solicitors, and filed herein his replication to the answer of A. J. Williams et al., which said replication is in words and figures as follows, to wit:

In the district court of the first judicial district of Colorado Territory, in and for the county of Arapahoe, to the May term, A. D. 1868, in chancery.

ALFRED H. CLEMENTS
vs.
JOSEPH P. MACHEBEUF ET AL.

TERRITORY OF COLORADO,
Arapahoe County, ss:

The replication of Alfred H. Clements, complainant, to the joint answers of Andrew J. Williams, John M. M. Larimer, William H. H. Larimer, Edward McClintock, Marcus Walker, Charles G. Chever, Elisha P. Stout, Emma C. Le Fevre, Elizabeth F. Beal, William Lerchin, Charles Lerchin, jr., George W. Kasler, William M. Clayton, and John Mechling.

The complainant, saving and reserving to himself all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto, says that he will aver and prove the said bill to be true, certain, and sufficient in law to be answered unto, and that the said answer of the defendants is uncertain, untrue, and insufficient to be replied unto by this complainant, without this, that any other matter or thing whatsoever the said answers contained, material or effectual in the law to be replied unto, confessed and
81 avoided, traversed or denied, is true; all of which matters and things this complainant is and will be ready to aver and prove as this honorable court shall direct, and humbly prays as in and by his said bill he hath already prayed.

ALFRED H. CLEMENTS,
By BROWN & MECHLING and
GEO. W. PURKINS,
His Solicitors.

And afterwards, to wit, on the twenty-second day of December, A. D. eighteen hundred and sixty-nine, the same being still of the October

term, A. D. eighteen hundred and sixty-nine, of said court, the following proceedings were had in said cause, to wit:

A. H. CLEMENTS
vs.
JOSEPH P. MACHEBEUF ET AL.

Now on this day comes the said complainant by S. D. Browne, esq., his solicitor, and moves the court that this case be referred to John W. Webster, esq., master in chancery of this court, to take proof on the issue on the state of the pleadings between the said complainant and the said defendants, and that he report the same to this court without delay; and it is so ordered.

And afterwards, to wit, on the twentieth day of July, A. D. eighteen hundred and seventy, came John W. Webster, esq., master in chancery of said court, and filed herein his report, which said report is in words and figures as follows, to wit:

82 In the district court of the first judicial district of the Territory of Colorado, within and for the county of Arapahoe, of the October term, A. D. 1869, in chancery.

ALFRED H. CLEMENTS
vs.
JOSEPH P. MACHEBEUF ET AL.

TERRITORY OF COLORADO,
County of Arapahoe, ss:

Depositions and proofs taken this fifth day of January, A. D. one thousand eight hundred and seventy, in the above-entitled cause, on the part and behalf of the complainant, before John W. Webster, one of the masters in chancery of said court.

Messrs. Browne & Mechling, esqs., appear as solicitors for complainant, and E. L. Smith, esq., appears as solicitor for respondents, at the master's office, at ten o'clock a. m., and by agreement of solicitors, the taking of testimony and proofs was adjourned until Thursday, the ninth day of June, A. D. 1870, at ten o'clock a. m., at my office, in the city of Denver, county of Arapahoe, and Territory of Colorado.

JOHN W. WEBSTER,
Master in Chancery.

Pursuant to the above adjournment, the taking of depositions and proofs in the above cause on the part and behalf of complainant is resumed at my office in the city of Denver, county and Territory aforesaid, on this ninth day of June, A. D. 1870, at ten o'clock a. m.

Present Messrs. S. E. Browne, esq., for complainant, and Alfred Sayre, for defendant.

83 By agreement of solicitors, the *the* taking of depositions and proofs in the above cause on the part and behalf of complainant was adjourned until Saturday, the eleventh day of June, A. D. 1870, at two o'clock p. m., at my office in the city of Denver, county of Arapahoe, and Territory of Colorado.

JOHN W. WEBSTER,
Master in Chancery.

Pursuant to the above adjournment, the taking of depositions and proofs in the above cause on the part of the complainant is resumed at my office in the city of Denver, county and Territory aforesaid, on this eleventh day of June, A. D. 1870, at two o'clock p. m.

Present, S. E. Browne, esq., solicitor for complainant, and A. Sayre and E. L. Smith, esqu'rs, solicitors for defendants.

CALEB B. CLEMENTS, a witness produced, being duly sworn according to law by said master, & on being orally examined by solicitor for complainant, deposed and testified as follows:

Interrogatory 1st. What is your name, age, and place of residence?

Answer 1. My name is Caleb B. Clements; my age is fifty-two years; my residence is Denver, in the county of Arapahoe and Territory of Colorado.

Interrogatory 2. Are you acquainted with the parties complainant and defendants in this cause, and the property in controversy in this suit?

84 Answer 2. I am acquainted with the complainant, who is my son, and some of the defendants, and the property in controversy.

Interrogatory 3. Look at paper now handed to you, and state whether or not exhibit marked "A," and hereto attached, is or is not a true copy thereof.

Answer 3. It is.

Interrogatory 4. Do you, or do you not, know anything of a certain bond, referred to in the amended answer of Joseph P. Machebeuf, and also in the answer of certain other defendants, as having been executed by complainant to Hiram J. Brendlinger, mayor of Denver, in trust for the citizens of Denver, dated June, 1864? If yes, state all you know about said bond and its execution.

(Objected to by solicitor for defendant.)

Answer 4. I do know about said bond. I know that I executed a bond to Mr. H. J. Brendlinger, as mayor of Denver, in which I undertook that my son Henry, the complainant, should, after the entry of said land, deed back to lot-holders or claimants on proper abstracts for lots included in the land described in Exhibit A, for the period of three months or ninety days, and that a notice to that effect should be published in the Denver papers. That bond was signed by myself. I never saw the bond after its execution, though I inquired for it of Brendlinger, Judge Hall, and others, and was informed that it went down the river in the flood in the safe with other papers. I am not certain about the date of this bond; it was before the entry of the land. I don't know the month.

85 Interrogatory 5. State if you know the date of the flood referred to, in which the safe of the city was lost.

Answer 5. I do not. I know that it was in the month of May, 1864. I cannot tell the exact day.

Cross-examined by solicitors for defendants:

Cross-interrogatory 1. Had you any interest or did you take any part in the entry of this land referred to in Exhibit A?

Answer 1. I had no interest and took no part in the entry of this land.

Interrogatory 2. Have you since acquired any interest in said land; and if so, what interest, if any?

(Objected to by solicitors for complainant.)

Answer 2. I bought out my son, the complainant, in the latter part of the year 1869 or the beginning of 1870.

Interrogatory 3. Did you get a deed from your son for that land?

Answer 3. I did.

Interrogatory 4. Do you now hold the interest acquired by that deed?

Answer 4. I do.

Redirectly examined by solicitor for complainant:

86 Interrogatory 1. Have you any pecuniary interest in the result of this suit?

Answer 1. I have not.

(The solicitors for defendant object to the foregoing testimony on the ground that the witness is incompetent, on account of interest in the event of the suit.)

C. B. CLEMENTS.

Subscribed and sworn to before me this 11th day of June, A. D. 1870.

JOHN W. WEBSTER,
Master in Chancery.

By agreement of solicitors the taking of testimony and proofs in this cause is hereby adjourned until Tuesday, the nineteenth day of June, A. D. 1870, at ten o'clock a. m., at my office, in the city of Denver, county of Arapahoe and Territory of Colorado.

JOHN W. WEBSTER,
Master in Chancery.

Pursuant to the above adjournment the taking of testimony and proofs in this cause is resumed, on the part of complainant, at my office in the city of Denver aforesaid, on Tuesday, the nineteenth day of June, A. D. 1870, at ten o'clock a. m.

Present, S. E. Browne, esq., solicitor for complainant; Alfred Sayre, esq., solicitor for defendant A. J. Williams; and E. L. Smith, esq., solicitor for Joseph P. Machebeuf.

The solicitor for complainant introduced in evidence the patent from the United States, which is marked Exhibit B and hereto attached, making a part of this report, subject to the stipulation of solici-

87 tors made in this cause, and the further taking of testimony is hereby closed.

JOHN W. WEBSTER,
Master in Chancery.

ALFRED H. CLEMENTS
vs.
JOSEPH P. MACHEBEUF ET AL. } In chancery.

TERRITORY OF COLORADO,
County of Arapahoe:

To the honorable Christian S. Eyster, judge of the district court of the first judicial district of the Territory of Colorado within and for the county of Arapahoe, presiding in chancery. At the June term, A. D. 1870.

Under and by virtue of an order of this court made in the above cause, dated the twenty-second day of December, in the year of our

Lord one thousand eight hundred and sixty-nine, by which it was referred to one of the masters of this court residing in the county of Arapahoe to take testimony and proofs in this cause and report the same to the court, I, the subscriber, one of the masters of this court, residing in the county of Arapahoe, to whom the execution of said order was confided, do hereby certify and report:

That I have taken the testimony of all witnesses produced before me on the part of complainant, and that no witnesses were produced on the part of defendants, or either of them, and that the testimony of Caleb B. Clements, a witness produced on the part of complainant, is hereunto annexed and made a part of this my report; that I have marked Exhibits A & B, and attached the same as part of the proofs in
88 this cause, and which are hereto annexed and make a part of this my report, and that the adjournments were made as hereinbefore set forth by agreement of solicitors.

And I further certify and report that the material facts set forth in the complainant's bill have been proved before me.

All of which is respectfully submitted, July 19th, 1870.

JOHN W. WEBSTER,
Master in Chancery.

Master's fees: Taking depositions, summoning witnesses, and attaching exhibits, 5.00; adjournment under the statute, per diem, 2.50; report to court, 5.00—$12.50.

Exhibit B referred to in foregoing proofs.—JOHN W. WEBSTER, *Master in chancery.*

The United States of America to all whom these presents shall come, greeting:

Whereas, in pursuance of the act of Congress, approved March 3, 1855, entitled "An act in addition to certain acts granting bounty-land to certain officers and soldiers who have been engaged in the military service of the United States," there has been deposited in the General Land-Office warrant No. 103468, for 160 acres, in favor of Ah-le-noa-oh-qua, minor child of Ne-sho-wha, deceased, warrior. Captain Moses' company Delaware Indians, Florida war, with evidence that the same has been duly located upon the south half of the northeast quarter, and the east half of the southeast quarter of section thirty-four, in township three, south of range sixty-eight west, in the district of lands formerly subject to sale at Golden City, now Denver City, Colorado Territory, containing one hundred and sixty acres, according to the official plat of the survey of the said land returned to the General Land-Office by the surveyor-general; the said warrant having
89 been assigned by the said Ah-le-noa-o-qua to Louis A. Menerger, and by him to Alfred H. Clements, in whose favor the said tract has been located.

Now know ye, that there is therefore granted by the United States unto the said Alfred H. Clements, as assignee as aforesaid, and to his heirs, the tract of land above described, to have and to hold the said tract of land with the appurtenances thereof unto the said Alfred H. Clements, as assignee as aforesaid, and to his heirs and assigns forever.

In testimony whereof, I, Andrew Johnson, President of the United States of America, have caused these letters to be made patent, and the seal of the General Land-Office to be hereunto affixed.

Given under my hand at the city of Washington the first day of December, in the year of our Lord one thousand eight hundred and sixty-five, and of the Independence of the United States the ninetieth.

By the President:

[SEAL.]

ANDREW JOHNSON.
By EDW. D. NEILL, *Sec'y.*

Recorded vol. 233, page 51.

J. N. GRANGER,
Recorder of the General Land-Office.

Filed for record July 5th, A. D. 1866, at 4 o'clock p. m.
Recorded in book 11, page 253.

CHAS. G. CHEVER,
C'k & Recorder, Arapahoe Co., Colo. Territory.

$1.50, p'd.

90 EXHIBIT A, *referred to in foregoing testimony.*—JOHN W. WEBSTER, *master in chancery.*

The United States of America to all to whom these presents shall come, greeting:

Whereas, in pursuance of the act of Congress approved March 3, 1855, entitled "An act in addition to certain acts granting bounty-land to certain officers and soldiers who have been engaged in the military service of the United States," there has been deposited in the General Land-Office warrant No. 103,468 for 160 acres, in favor of A-lenoa-oh-qua, minor child of Ne-sho-wha, deceased warrior, Captain Moses' company Delaware Indians, Florida war, with evidence that the same has been duly located upon the south half of the northeast quarter, and the east half of the southeast quarter of section thirty-four, in township three south of range sixty-eight west, in the district of lands formerly subject to sale at Golden City, now Denver City, Colorado Territory, containing one hundred and sixty acres according to the official plat of the survey of said land returned to the General Land-Office by the surveyor-general, the said warrant having been assigned by the said Ah-le-noa-oh-qua to Louis A. Menerger, and by him to Alfred H. Clements, in whose favor the said tract has been located. Now know ye that there is, therefore, granted by the United States unto the said Alfred H. Clements, as assignee as aforesaid, and to his heirs, the tract of land above described; to have and to hold the said tract of land, with the appurtenances thereof, unto the said Alfred H. Clements as assignee, as aforesaid, and his heirs and assigns forever.

In testimony whereof, I, Andrew Johnson, President of the United States of America, have caused these letters to be made patent, and the seal of the General Land-Office to be hereunto affixed.

91 Given under my hand at the city of Washington, the first day of December, in the year of our Lord one thousand eight hundred and sixty-five, and of the Independence of the United States the ninetieth.

By the President:

ANDREW JOHNSON,
By EDW. D. NEILL, *Sec'y.*

Recorded, vol. 233, page 51.—(A copy.)

J. M. GRANGER,
Recorder of the General Land-Office.

And afterwards, to wit, on the sixteenth day of November, A. D. eighteen hundred and seventy, the *the* same being one of the days of the special November term, A. D. eighteen hundred and seventy, the following proceedings were had and entered of record in said cause, to wit:

ALFRED H. CLEMENTS
vs.
OSEPH P. MACHEBEUF ET AL. } In chancery.

Now on this day comes the said complainant, by S. E. Browne, esq., his solicitor, and the said defendants, by Messrs. Alfred Sayre & E. L. Smith, their solicitors, also come, and thereupon this cause came on for a final hearing on the testimony heretofore taken before the master, which is argued by counsel, and the matter held under advisement by the court.

And afterwards, to wit, on the eighteenth day of November,
92 A. D. eighteen hundred and seventy, it being still of the special November term, A. D. eighteen hundred and seventy, of said court, the following proceedings were had in said cause, to wit:

In the district court of the first judicial district of Colorado Territory, in and for Arapahoe County. October term, A. D. 1870. In chancery.

ALFRED H. CLEMENTS
vs.
JOSEPH P. MACHEBEUF ET AL.

TERRITORY OF COLORADO,
Arapahoe County, ss:

And now on this day the said cause coming again on to be heard upon the complainant's bill of complaint, the answer of the said Joseph P Machebeuf, Andrew J. Williams, John M. M. Larimer, William H. H. Larimer, Edward McClintock, Marcus Walker, Charles G. Chever, Elisha P. Stout, Emma C. Le Fevre, Elizabeth M. Bealle, John Mechling, William Lerchin, Charles Lerchin, jr., George W. Kasler.

And the replications thereto, and upon the proofs, exhibits, testimony, and report of the master in chancery of said court, heretofore made and filed herein, on consideration whereof the court doth find the equity of said cause with the complainant, and *and* doth hereby approve and confirm the said report.

It is therefore ordered, adjudged, & decreed by the court that the said deed of conveyance from the said James Hall, as the
92½ attorney in fact of the complainant, to the said Joseph P. Machebeuf, for block (214) two hundred and fourteen, and for lot (22) twenty-two in block No. (216) two hundred and sixteen. The conveyance from the said James Hall, as such attorney in fact, to the said Andrew J. Williams, for lots Nos. (19 & 20) nineteen and twenty, in block No. (250) two hundred and fifty; lots (15, 16, & 24) fifteen, sixteen, and twenty-four, in block No. (145) one hundred and forty-five; (26, 27, & 28) twenty-six, twenty-seven, and twenty-eight, in block No. (144) one hundred and forty-four, and lots Nos. (19 & 20) nineteen and twenty, in block No. (158) one hundred & fifty-eight. The conveyances from the

said James Hall, as such attorney in fact, to the said John M. M. Larimer, for lots (15 & 16) fifteen and sixteen, in block No. (225) two hundred and twenty-five, and lots (23 & 24) twenty-three and twenty-four, in block No. (299) two hundred and ninety-nine. The conveyance from the said James Hall, as such attorney in fact, to the said William H. H. Larimer, for lots (25 & 26) twenty-five and twenty-six, in block No. (188) one hundred and eighty-eight; lots (13 & 14) thirteen and fourteen, in block No. (286) two hundred and eighty-six; lots (19 & 20) nineteen and twenty, in block No. (298) two hundred and ninety-eight, and lots No. (9 & 10) nine & ten, in block No. (300) three hundred. The conveyance from the said James Hall, as such attorney in fact, to Edward McClintock, for lots (23 & 24) twenty-three and twenty-four, in block No. (248) two hundred and forty-eight. That the conveyance from James Hall, as such attorney in fact, to Marcus Walker, for lots (11 & 12) eleven & twelve, in block No. (287) two hundred and eighty-seven; lots (27 & 28) twenty-seven and twenty-eight, in block No. (156) *in block No.* (156) one hundred and fifty-six; lot (10) ten, in block (158) one hundred and fifty-
eight; lots (31 & 32) thirty-one and thirty-two, in block (178) one
93 hundred and seventy-eight; lots (3 & 4) three & four in block No. (250) two hundred and fifty; lots (5 & 6) five and six in block No. (261) two hundred and sixty-one, and lots No. (11 & 12) eleven and twelve in block No. (335) three hundred and thirty-five. That the conveyance from the said James Hall, as such attorney in fact, to Charles G. Chever for lots (15 & 16) fifteen and sixteen in block No. (260) two hundred and sixty; lots (11 & 12) eleven and twelve in block No. (250) two hundred and fifty; lots (15 & 16) fifteen and sixteen in block No. (155) one hundred and fifty-five; lots (1 & 2) one & two in block No. (180) one hundred and eighty; lots (1 & 2) one and two in block No. (216) two hundred and sixteen; lots (5 & 6) five and six in block No. (223) two hundred and twenty-three, and lots Nos. (1 & 2) one and two in block No. (249) two hundred and forty-nine. The conveyance from said James Hall, as such attorney in fact, to the said Elisha P. Stout for lots (29 & 30) twenty-nine and thirty in block No. (283) two hundred and eighty-three; lots (21 & 22) twenty-one and twenty-two in block No. (144) one hundred and forty-four; lots (13 & 14) thirteen & fourteen in block No. (157) one hundred and fifty-seven; lots (7 & 8) seven and eight in block No. (178) one hundred and seventy-eight; lots (27 & 28) twenty-seven and twenty-eight in block No. (248) two hundred and forty-eight, and lots (25 & 26) twenty-five and twenty-six in block No. (260) two hundred and sixty. The conveyance from the said James Hall, as such attorney in fact, to the said Elizabeth F. Beall, for lots No. (18) eighteen in block No. (124) one hundred and twenty-four; lots No. (1 & 2) one and two in block No. (178) one hundred and seventy-eight; lots (15 & 16) fifteen and sixteen in block No. (215) two hundred and fifteen; lots (25 & 26) twenty-five and twenty-six in block No. (299) two hundred and ninety-nine, and lots No. (13 & 14) thirteen and fourteen
94 in block No. (263) two hundred and sixty-three. That the conveyance from the said James Hall, as such attorney in fact, to the said Emma Le Fevre, for lots No. (1 & 2) one and two in block No. (226) two hundred and twenty-six; lots (7 & 8) seven and eight in block No. (225) two hundred and twenty-five, & lots (1 & 2) one and two in block No. (263) two hundred and sixty-three, are fraudulent and void, having been so executed and delivered without lawful authority and without consideration. It is therefore ordered, adjudged, and decreed by the court, that the said several conveyances, as hereinbefore set forth

and described, be, and the same are hereby, canceled, and that the said defendants pay the costs of this proceeding, and that the complainant have execution therefor.

the court.

C. S. EYSTER.

Nov. 18th, 1870.

And the defendants by their counsel excepts to the same, and the exception is allowed to them. And the defendants pray an appeal from the said decree, and the said appeal is allowed to them on condition that they file a bond in the sum of seven hundred dollars ($700) within sixty days from this date, with the usual conditions, and with security to be approved by the clerk of this court, and it is further stipulated in open court that a bill of exceptions m'y be signed by the judge in vacation, as if in term-time.

TERRITORY OF COLORADO,
Arapahoe County, ss:

95 I, Oliver A. Whittemore, clerk of the district court of the first judicial district of Colorado Territory, within and for the county of Arapahoe, do hereby certify that the within and foregoing is a full, true, and complete transcript and copy of all proceedings had and entered of record, and of all papers filed in said court in a certain suit lately pending on the chancery side of said court, wherein Alfred H. Clements was complainant and Joseph P. Macheboeuf and others defendants.

In witness whereof I have hereunto subscribed my name and the seal of said court, at Denver, this first day of February, A. D. 1871.

SEAL OF DISTRICT COURT, ARAPAHOE COUNTY. OLIVER A. WHITTEMORE, *Clerk.*

Fees, $57.60. Paid by plffs. in error.

(Endorsed:) 36. Alfred H. Clements vs. Joseph P. Macheboeuef et al. Filed February 12, 1872. David W. Crater, clerk. E. L. Smith, Alfred Sayre, solicitors of plff. in error.

96 And afterwards, to wit, on the 12th day of February, A. D. 1872, there was filed in the office of the clerk of the supreme court of Colorado Territory, in said cause, a certain stipulation in words and figures following, to wit:

In supreme court, February term, 1872.

JOSEPH P. MACHEBOEUF ET ALS., PLFFS. IN error,
vs.
ALFRED H. CLEMENTS, DEFT. IN ERROR.
} Error to the district court of the county of Arapahoe.

TERRITORY OF COLORADO:

It is hereby stipulated that the above cause may be docketed at the said term, and I hereby enter the appearance of the defendant in error and waive the issuing of scire facias & writ of error; abstracts, briefs, and arguments may be filed in vacation at such times as may be ordered by the court.

J. E. BROWNE,
Atty. for Deft. in Error.
E. L. SMITH,
ALFRED SAYRE,
Solicitors for Plffs. in Error.

(Endorsed:) Sup. court. Machbeuf et al. vs. Clements.—Stipulation. Filed July 9, 1872. David W. Crater, clerk.

97 And afterwards, to wit, on the 14th day of February, the same being one of the days of the regular term of said supreme court, A. D. 1872—present, honorable Moses Hallett, chief-justice, honorable James B. Belford and E. T. Wells, associate justices; William A. Smith, deputy U. S. marshal, and David W. Crater, clerk of said court—

Among other, the following proceedings were had and entered of record in said court in said cause, to wit:

JOSEPH P. MACHBEOUF, JOHN HUTCHINSON, Andrew J. Williams, Theodore W. Bayard, George D. Bayard, John M. M. Larimer, Edward McClintock, Marcus Walker, Charles G. Chever, Elisha P. Stout, Edw. Le Fevre, Elizabeth F. Beal, L. A. Maurice, John Mechling, Wm. Lerchen, Chas. Lerchen, George W. Kassler, William M. Clayton, Gustave F. Perenand, Malvina N. Cunningham, John N. Cunningham, and Carlos Gove, plaintiffs in error,
vs.
ALFRED H. CLEMENTS, DEFENDANT IN ERROR. } No. 36.

Now on this day come the said parties by their attorneys, E. L. Smith and Alfred Sayre, for the said plaintiff in error, and Browne
98 & Putnam for the said defendants in error, and this cause came on to be heard, and the same is submitted to the consideration and judgement of the court, and judgement thereon is reserved until another day. And it is ordered by the court that the said plaintiffs in error file their written assignment of errors herein within thirty days from this day, and file their written arguments herein on or before the first day of June next ensuing this day, and that the said defendant in error file his written reply thereto on or before the first day of September thereafter.

And afterwards, to wit, on the fifth day of March A. D. 1873, the same being one of the days of the regular term of said supreme court for said year—present, honorable Moses Hallet, honorable James B. Belford, and honorable Ebenezer T. Wells, associate justices; M. A. Shaffenburg, U. S. marshal, and David W. Crater, clerk of said court—

Among other, the following proceedings were had and entered of record:

99 JOSEPH P. MACHBEUF, ANDREW J. WILLiams, John M. M. Larimer, William H. H. Larimer, Marcus Walker, Charles G. Chever, Elisha P. Stout, Emmory C. Le Fevre, William Lerchen, Charles Lerchen, jr., George W. Kassler, William M. Clayton, and John Mechling, impleaded with John H. Hutchinson, plaintiffs in error,
vs.
ALFRED H. CLEMENTS, DEFENDANT IN ERROR. } No. 36.

At this day came the said parties, by their attorneys, E. L. Smith and Alfred Sayre, esqrs., for said plaintiffs in error, and Browne & Putnam,

for defendant in error, and this cause having been heretofore argued by counsel for said parties and submitted to the consideration and judgement of the court, and it appearing to the court that there is manifest error in the final decree of the said district court in this cause: it is, therefore, ordered by the court, that the final decree of the said district court of Arapahoe County, in this cause, made on the eighteenth day of November, in the year eighteen hundred and seventy, be and
100 the same is hereby reversed, and this cause is remanded to the said district court, with directions to that court that as to the plaintiffs in error the bill be dismissed with costs. That the opinion of the court filed herein be recorded, and that the said plaintiffs in error secure of and from the said defendant in error their costs and charges in this behalf expended, and that they have execution therefor.

And to wit, on the 6th day of March, A. D. 1872, there was filed in the office of the clerk of said supreme court an assignment of error in the foregoing-entitled cause, in words and figures following, to wit:

TERRITORY OF COLORADO, *ss:*

In the supreme court of the February term A. D. 1872.

JOSEPH P. MACHBUEF, ANDREW J. WILLIAMS, John M. M. Larimer, William H. H. Larimer, Edward McClintock, Marcus Walker, Charles G. Chever, Emma C. Favre, Elizabeth F. Beal, William Lurchen, Charles Lurchen, jr., George W. Kassler, William M. Clayton, plaintiffs in error,

vs.

ALFRED H. CLEMENTS, DEFENDANT IN ERROR.

101 Error to the district court of the first judicial district of the Territory of Colorado, sitting within and for the county of Arapahoe. In chancery.

Assignment of errors.

And now comes the said plaintiffs in error, by Edward L. Smith and Alfred Sayre their solicitors, and say that there is in the record and proceedings aforesaid manifest error, in this, to wit:

I. That the court below erred in finding the equity of said cause to be with the complainant, and that the several deeds made to certain of the defendants by James Hall, as the attorney in fact of Alfred H. Clements, were fraudulent and void, and were executed and delivered without lawful authority, and without consideration, and that in cancelling the said conveyances mentioned in the final decree in said cause and each of them.

II. That the court below erred in granting the final decree set forth in the record aforesaid, so far as the same relates to
102 the said defendants in error, and so far as relates to each of said defendants, and so far as the same relates to the real estate in said decree mentioned, and to each several part and parcel thereof.

III. That the court below erred in granting and giving the final decree ordered in the aforesaid cause.

Whereupon the said plaintiffs in error pray that *that* for the error

aforesaid the said decree may in all things be revoked, annulled, *revoked* and set aside, and altogether held for naught, and they be restored to all things that they may have lost by said decree.

EDWARD L. SMITH,
ALFRED SAYRE,
Solicitors for Plffs. in Error.

(Endorsed:) 36. Joseph P. Machbuef et al., plffs. in error, v. Alfred H. Clements, deft. in error. Assignment of error. Filed March 6th, 1872. David W. Crater, clerk. E. L. Smith, Alfred Sayre, plffs.' atty.

And afterwards, to wit, on the 9th day of July, 1872, there was filed in the office of the clerk of said supreme court of Colorado Territory, in said cause, a certain stipulation between the parties thereto, and in words and figures following, to wit:

103

Supreme court, February term, A. D. 1872.

JOSEPH P. MACHBUEF ET AL., PLFFS. IN ERROR,
v.
ALFRED H. CLEMENTS, DEFT. IN ERROR.

TERRITORY OF COLORADO:

It is hereby agreed by the deft. in error that time to file the arguments of the plff. in error, in said cause, be, and hereby is, extended until August 1st, 1872.

S. E. BROWNE,
Sol. for Deft. in Error.
E. L. SMITH,
ALFRED SAYRE,
Deft. in Error.

(Endorsed:) Sup. court. Machbuef et al. v. Clements. Stipulation. Filed July 9, 1872. David W. Crater, clerk.

104 And afterwards, to wit, on the 15th day of February, 1873, there was filed in the office of the clerk of said supreme court a joinder in error, in words and figures following, to wit:

In supreme court, February term, 1873.

JOSEPH P. MACHABOEUF ET AL., PLFFS. IN error,
vs.
ALFRED H. CLEMENTS, DEFT. IN ERROR.

TERRITORY OF COLORADO, *ss:*

And the said Alfred H. Clements, defendant in error, by Browne & Putnam, his solicitors, come' and say' that there is no error, either in the record and proceedings or in the decree of the district court, in manner and form as above assigned, and therefore he prays that the said decree may be affirmed, and that his costs may be adjud'ed to him as aforesaid, &c.

By BROWNE & PUTNAM,
Sols. for Deft. in Error.

(Endorsed:) 36. Joseph P. Machaboef et al. vs. Alfred H. Clements, deft. in error. Joinder in error. Filed February 15, 1873. David W. Crater, clerk. B. & Put.

And afterwards, to wit, on the 7th day of March, 1873, there was filed in the office of the clerk of said supreme court a certain affidavit, in words and figures following, to wit:

In supreme court.

TERRITORY OF COLORADO, *ss:*

105 February term, A. D. 1873.

JOSEPH P. MACHABOEAF ET AL., PLFFS. IN error,
vs.
ALFRED H. CLEMENTS, DEFT. IN ERROR. } Error.

Samuel E. Browne, of said Territory of Colorado, of lawful age, being duly sworn, says on oath that he is well acquainted with the property in controversy, and that the same is worth more than two thousand dollars, and further saith not.

SAMUEL E. BROWNE.

Subscribed and sworn to before me this 7th day of March, A. D. 1873.
[SEAL OF COURT.] DAVID H. CRATER,
Clerk of the Supreme Court of Colorado Territory.

(Endorsed:) 36. Joseph P. Machabouef et al., plffs. in error, vs. Alfred H. Clements, deft. in error. Afft. of value. Filed March 7, 1873. David W. Crater, clerk.

And on the same day, to wit, the 7th day of March, A. D. 1873, the same being one of the days of the February term of said supreme court, A. D. 1873—present, honorable Moses Hallett, chief-justice; honorable James B. Belford, and honorable Ebenezer T. Wells, associate jus-
106 tices; M. A. Shaffenburg, U. S. marshal, and David W. Crater, clerk of said court—

Whereupon the following proceedings were had in said court in said cause, and entered of record, to wit:

JOSEPH P. MACHABUEF, ANDREW J. WILLIAMS, John M. M. Larimer, William H. H. Larimer, Marcus Walker, Charles G. Chever, Elisha P. Strong, Emma C. La Fevre, William Lerchen, Charles Lerchen, jr., George W. Kassler, William M. Clayton, and John Mechling, impleaded with John H. Hutchinson, plaintiffs in error,
vs.
ALFRED H. CLEMENTS, DEFENDANT IN ERROR. } No. 36. Error to district court, Arapahoe County.

At this day come the said defendant in error, by Browne & Putnam his attorneys, and prays an appeal from the judgment of this court in the above-entitled cause to the Supreme Court of the United States. And it appearing to the court that the property in controversy is

of the value of one thousand dollars and upwards, it is, therefore, ordered by the court that, upon the said defendant in error filing in this court within fifteen days from this day his appeal bond, in the penal sum of five hundred dollars, conditioned according to law, and sureties approved by one of the justices of this court, that said appeal be allowed.

And afterwards, to wit, on the 17th day of March, 1873, there was filed in the office of the clerk of the supreme court of Colorado Territory in the aforesaid cause, in words and figures following, to wit:

Know all men by these presents that we, Alfred H. Clements and Joseph B. Cofield, of the county of Arapahoe and Territory of Colorado, are held and firmly bound unto Joseph P. Machaboeuf, Andrew J. Williams, John M. M. Larimer, William H. H. Larimer, Edward McClintock, Marcus Walker, Charles G. Chever, Elisha P. Stout, Emma C. Lefever, Elizabeth M. Beale, John Mechling, William Lerchen, Charles Lerchen, jr., George W. Kassler, and William M. Clayton, in the penal sum of five hundred dollars, lawful money of the United States,
108 for the payment of which, well and truly to be made, we do hereby bind ourselves, our heirs, executors, and administrators, jointly, severally, & firmly by these presents, sealed with our seals, and dated this 13th day of March, A. D. 1873.

The condition of the above obligation is such that, whereas the said Joseph P. Macheboeuf, Andrew J. Williams, John M. M. Larimer, William H. H. Larimer, Marcus Walker, Charles G. Cheaver, Elisha P. Stout, Emma C. Lefevre, Elizabeth M. Beale, John Mechlin, William Lerchen, Charles Lerchen, jr., George W. Kassler, and William M. Clayton, plaintiffs in error, did, on the 7th day of March, A. D. 1873, obtain a final decree against the said Alfred H. Clements, defendant in error, in the supreme court of said Territory, from which said decree the said Alfred H. Clements then and there prayed an appeal to the Supreme Court of the United States, which was allowed on the said Alfred H. Clements executing a bond in said sum, with surety, according to law:

Now, therefore, if the said Alfred H. Clements shall prosecute his said appeal with effect, and without delay, and shall pay all costs
109 of the said appeal in case the said decree of the said supreme court of Colorado Territory shall be affirmed by the Supreme Court of the United States, then this obligation shall be null and void; otherwise shall be and remain in full force and effect.

ALFRED H. CLEMENTS.
JOSEPH B. COFIELD.

In the presence of—
T. G. PUTNAM.

Taken and approved this 17th day of March, A. D. 1873.
MOSES HALLETT,
C. J. Sup. Court Col. Ter.

(Endorsed:) Alfred H. Clements, appellant, vs. Joseph P. Macheboeuf et al., appellees. Appeal bond. Filed March 17th, 1873. David W. Crater, clerk of supreme court of Colorado Territory.

And afterwards, to wit, on the 17th day of October, A. D. 1873, there was filed in the office of the clerk of the supreme court of Colorado Territory the following original stipulation in this cause, which

said original stipulation is hereto after attached, and in words and figures following, to wit:

Supreme Court United States, October term, 1873. In chancery.

ALFRED H. CLEMENTS, APPELLANT, *vs.* JOSEPH P. MACKEBOEUF ET AL., appellant. } Appeal from the decree of the Supreme Court of the Territory of Colorado.

Whereas on the 7th day of March, A. D. 1873, an appeal was allowed in the above cause to the Supreme Court of the United States, and whereas the commencement of the next term of said court, after the allowance of said appeal, has been changed without the actual knowledge of appellant, and therefore he having neglected to perfect his appeal to said October term of said Supreme Court of the United States, it is therefore hereby stipulated and agreed by said parties, through their solicitors, that the said cause may be docketed in said court, of said term, at any time prior to the first Monday in December next, without objection as to the time of the docketing of said cause, but without waiver of any other objection to the taking or hearing of said appeal.

ALFRED SAYRE,
E. L. SMITH,
For Defts. & Appellees.
BROWNE & PUTNAM,
Solrs. for Appellant.

(Indorsed:) Alfred H. Clements, appellant, vs. Jos. P. Machebouf et al., appellees. Stipulation filed October 17, 1873. David W. Crater, clerk supreme court, Colorado Territory.

MACHEBOEF ET AL. *vs.* CLEMENTS. } February term, 1873.

WELLS, J.:

The plaintiffs in error have assigned for error only the final decree given in the district court, and we have therefore omitted all consideration of the sufficiency of complainant's bill, and the regularity of the proceedings anterior to the decree.

In view of the conclusion to which we have arrived upon another point in the case, it will be unnecessary to consider whether the conveyances sought to be impeached by the bill can be referred to the letter of attorney of June 17th, 1864.

I therefore proceed to the question, whether they can be sustained, as executed under the letter of attorney of June 14th.

It is manifest that the authority given by the instrument was a conditional or limited one, in order to the exercise of which, certain prerequisites must have occurred; thus, the attorney could convey only upon application; the application must have been within three months next after the date of the bond to Brendlinger, which is referred to in the power; the applicant must have produced to the attorney an abstract of his title, certified from the recorder's office; he must have paid the sum of forty cents for each lot conveyed, and the expenses of the

conveyance; and all other requisites and conditions set down in the bond to Brendlinger must have been complied with and performed; and if the conveyances here complained of, or any of them, were exe-
114 cuted without performance of these conditions, it may, I think, be well enough said that it was, in the language of the bill, "without any authority whatsoever." But the defendants severally deny this allegation of the bill, and there is no evidence, outside of the conveyances themselves, to show whether the conditions set down in the letter of attorney, of June 14, were or were not performed; and I think the case must therefore turn upon the question whether it was incumbent upon the complainant to prove the negative allegation of his bill in this respect, or upon the defendants to sustain the affirmative contained in the answers, in response thereto; that is to say, upon whom is the burden of proof?

It is argued on the part of the plaintiffs in error, that inasmuch as nothing appears to the contrary, the attorney must be supposed to have observed the limitations imposed upon him, according to the maxim, "omnia vite esse acta;" and since, if there be such presumption, the defendants in the court below were at liberty to rest thereon until it was overthrown, even though the burden of proof should be held to be upon them, it will be necessary to inquire how far the maxim sought to be applied extends.

In respect to the acts of public officers, this maxim is of almost universal application, and its force and scope in that class of cases is, I think, pretty well established and defined. How far it may be applied in support of the acts of private agents, is, upon authority, not very clear.

In Mr. Broom's work, (Leg. Max., 730*,) it is said that the pre-
115 sumption applies to the acts of private individuals, especially where they are of a formal character, as writing under seal; and the same doctrine is asserted in substantially the same words in Mr. Phillips' work on evidence, (5 new ed., p. 643*,) where many examples are cited from reported cases.

I do not perceive, however, that any of the cases there referred to are quite analogous to this, and, so far as I have been able to examine them, they appear to be examples of the application of the same maxim, in another form, in which it is sometimes seen in the books, and in which lapse of time is essential to raise the presumption. (1 Greenl. Ev., § 20.)

There are, indeed, many instances wherein the courts, although not expressly referring to this maxim, appear to apply the rule which announces; e. g., the seal of a corporation appearing affixed to a deed, purporting to be theirs, is presumed to have been affixed by proper authority. (Kohler vs. Black River Falls Iron Co., 2 Black, 717.) So where a corporation is authorized by its charter to acquire and hold real or personal estate, in a particular manner, or for particular purposes, and it is found in possession of such estate, it is presumed, nothing appearing to the contrary, to have acquired it in the manner and for the purposes authorized in the charter. (Downing vs. Mt. Washington Road Co., 40 N. H., 234; De Groff vs. Am. Linen Thread Co., 21 N. Y., 126; Chatague Bank vs. Risley, 19 N. Y., 381; Farmers' Loan and Trust Co. vs. Curtiss, 7 N. Y.; Farmers' Bank vs. Detroit R. R. Co., 17 Wis., 372.)

So where an insurance company was authorized to receive
116 promissory notes in certain cases only, it was held in an action brought by the corporation upon certain notes wherein it was named as payee, that, in the absence of proof to the contrary, it must be presumed that they were executed in a transaction within the cor-

porate powers, and in which the company were authorized to receive them. (Mutual Benefit Life Ins. Co. vs. Davis, 12 N. Y., 573.)

The case of Howard vs. Boorman, (17 Wis., 459,) asserts the same doctrine.

The same presumption has been applied to negotiable paper executed by a corporation. (Safford vs. Wyckoff, 4 Hill.)

So in the case of negotiable paper, purporting to be executed in the name of a partnership, the signature being shown to be in the handwriting of one of the firm, it is held that a presumption arises that the paper was executed in a partnership transaction, and not for the individual debt of him who subscribed it. (McMullan vs. McKenzie, 2 G. Greene, 368; Ensminger vs. Marvin, 5 Bif., 210.)

These cases appear to me to be quite analogous to the one now under consideration. In every one of them the question was one of authority; authority to do the particular act, certain conditions concurring, was shown, and the court presumed the concurrence of those things requisite to the rightful exercise of that authority, from the single fact that it had been exercised.

And if we admit the doctrine of these decisions, it is difficult to deny its application to the present case; for it is not apparent that, upon
117 principle, a distinction can be drawn between the case in which the authority is derived by letter of attorney, and those in which it springs from a charter of incorporation, or articles of copartnership: in each case the one exercising the authority is a private person, not acting under the sanction of an oath, nor liable to indictment for malfeasance. Nevertheless, the decisions here referred to have not, so far as I know, been questioned, and many others asserting quite as broad a doctrine might be cited. And in a case decided in the supreme court of Tennessee, where A, having an equity in lands, upon which certain installments of purchase-money remained unpaid, had conveyed it to B, in trust, to secure an indebtedness to C, with power in the trustee, upon default in payment, after maturity of the indebtedness, to sell in satisfaction thereof, and the holder of the legal estate had conveyed to C by deed, reciting a prior sale by B, at which C had become the purchaser, on bill brought by the heirs of A to compel a conveyance, nothing appearing to show whether B had ever sold to C, or if so, whether before or after the maturity of the indebtedness, the court say that "the presumption of law is not only in favor of the exercise of the power, but in favor of meritorious claimants, or innocent purchasers, that it was exercised in the legal mode." (Wilburn vs. Spofford et al., 4 Sneed, 704.) A former decision of the same court, Marshall vs. Stephens, (8 Humph., 159,) is there cited, announcing the same doctrine.

118 Against these decisions, however, are others equally in point, and entitled to equal respect. In Bruce vs. Duke, (2 Litt., 245,) Bruce brought his bill to compel a conveyance of certain lands, to one moiety whereof he derived title from Maury, by conveyance executed in his name by Barry, his attorney; the letter of attorney, after conferring power to settle and adjust land-titles in Kentucky, and to bring and defend suits necessary thereto, and to convey lands which the principal had before contracted to convey, contained a power in these words: "and if necessary to make sale of any of my said lands;" and it was objected that no necessity for the conveyance, by the attorney, under which the plaintiff claimed, was shown to have existed. To this the court, upon consideration of the evidence, were agreed; and as to whether the exigency authorizing the sale was to be presumed from the fact of the conveyance, the court say that "to admit the fact of a deed

having been made, to be evidence of a necessity to sell, would in effect prostrate all distinctions between limited and general authorities. A purchaser would then, after procuring a deed of conveyance, be secure in the title, though in making the sale the agent may have been guilty of the most palpable violation of his authority. The unauthorized act of the agent would then be evidence of his having acted correctly, and under the influence of that evidence the title would be adjudged to pass from the rightful owner, by the act of another, deriving no power or authority from him." So in the same court a distinction has been observed between public officers, acting under general
119 laws, and agents or commissioners appointed pro hac vice, by special statute, and as to the acts and proceedings of the latter class, the presumption omnia rite esse acta is said not to apply. Thus where commissioners had been appointed by act of the legislature, with authority to sell and convey such part of the lands of a decedent as might be sufficient to satisfy his debts, on ejectment, by one deriving title through conveyance of the commissioners, it was held that the plaintiff could not prevail, the existence of debts of the decedent not being affirmatively shown, and that upon no principle could the presumption usually indulged in favor of the acts of public officers acting under general laws, be extended to the case of those deriving authority under special enactments, to perform services of a private character. (Pittman v. Brownlee, 2 A. K. Marsh., 210.)

So in Gebron's Heirs vs. Jones, the supreme court of Virginia, in a case precisely like that of Wilburn vs. Spofford, arrived at a conclusion directly opposed to that of the supreme court of Tennessee. In that case, lands had been conveyed in trust to secure certain indebtedness of the grantor, with power in the trustee to sell upon default in payment, after giving notice; bill was brought to set aside a conveyance by the trustee upon the ground that the sale was made without notice, and the court held that no presumption could be indulged, either in favor of or against the regularity of the trustee's proceedings.

Upon authority, therefore, it cannot be said that out of the mere
120 fact that complainant's attorney has executed the conveyances mentioned in the bill, a legal presumption arises that he complied with those limitations which in the letter of attorney are prescribed to him, and I am not prepared to concede that, upon principle, such presumption ought to be indulged.

Nevertheless, it appears to me that, what amounts to the same thing in this case, the conveyances ought, as against the complainant, here to be received as prima-facie evidence of their own regularity.

It is conceded that without prior performance of the conditions limited in the letter of attorney, the conveyances are as absolutely without authority as though the letter of attorney had never been executed. But the grant of anything implies the grant of everything necessary to the enjoyment of the thing granted; and so every express power bears with it by implication every other power necessary to its exercise. (Broom's Leg. Max., 362*; De Witt vs. San Francisco, 12 Cala., 289; Rex vs. Jackson, 1 J. R., 653.)

And here the principal, having deputed to the attorney authority to act upon performance of the particular conditions nominated, has, by necessary implication, conferred the power to judge whether these conditions have been performed. The attorney was authorized to convey, but he could not convey until the conditions named by his principal were first complied with; of necessity, therefore, he was bound to judge and determine in the first instance, whether such compliance had

121 been made; and power to so judge and determine is as clearly given as though it had been set down in express words; and the attorney having power to determine for his principal as to the performance of those conditions, his admission that the conditions had been performed, which is by implication contained in each of these conveyances, is within the scope of the power delegated to him, and being made during the execution of the agency it is evidence against the principal. And herein this present case is distinguishable from Bruce vs. Duke, for there the controversey was between those claiming under the conveyance executed by the attorney and a third person not claiming under the principal; and as against such third person, the admissions of the agent were no evidence whatsoever.

I conclude, therefore, that while it may well be doubted whether the legal presumption relied upon can be indulged, the conveyances executed by the attorney contain an implied admission, made within the scope of the attorney's authority, that all the conditions of the letter of attorney had been complied with; and that, therefore, the conveyances in question are as against the complainant prima facie evidence of their own regularity.

But if this reasoning is inconclusive, if the conveyances made by the attorney are not to be received as evidence of a compliance with the requisites of the power under which he assumed to act, then, inasmuch as no evidence aliunde the conveyance was given, the question returns, upon whom was the burden of proof?

122 And as this question is not without difficulty, I have examined the authorities with some diligence to ascertain what rule is applied by the courts in cases like the present.

In the text-books it is stated with tolerable clearness, as follows: That where the plaintiff grounds his action upon negative allegation, the burden of showing that negation is upon him. (1 Greenl. Ev., § 78.) But to this rule is this exception, that where the subject-matter of the negative is such as not to admit of convenient proof, and it may reasonably be inferred that, if untrue, the defendant has peculiarly within his control the means of showing the affirmative, the burden of proof shall be upon him. (1 Greenl. Ev., § 79; 1 Phill. Ev., 5 Am. ed., 813*.) This exception is grounded upon convenience merely; the law not requiring that the plaintiff should produce evidence which in the nature of things must probably be inconclusive and unsatisfactory, and the production of which may involve delay and inconvenience, when, if the allegation be untrue, the defendant has in his own hands the means of at once and conclusively disproving it.

But upon this exception, it seems, is to be noted another: That though the case be as supposed in the last exception, yet, if the negative involve a charge of fraud, or criminal omission of duty, the burden of establishing it shall in general be upon him who asserts it. (1 Greenl. Ev., § 79, 80; 1 Phill. Ev., 812*, 815*.) In truth, this latter exception seems to be no exception, for it amounts to this only, that the presumption of innocence which the law makes shall stand in lieu of

123 those proofs which would otherwise be required of the party accused; and so casts the burden upon his adversary. These propositions seem to me clearly deducible from the text-writers and to accord with sound principles and the current of adjudged cases. To apply them to the present case, it is to be resolved:

1. Whether the allegation of complainant's bill that all of the several conveyances executed by Hall were executed without authority is necessary to the relief prayed; and, if so,

2. Whether it may fairly be said that the truth of the matter and the means of proof are so peculiarly within the knowledge and control of the defendants as to bring the case within the exception to the general rule; and if this be so,

3. Whether the bill contains the charge of fraud or criminal omission of duty in such sense as to raise the presumption of innocence in favor of the defendants.

Upon the first question, while it may well be doubted whether, even in its present form, admitting everything stated therein, the bill shows a title to equitable relief. I take it to be too clear for argument, that without the allegation of want of authority in the attorney, it would be entirely insufficient to warrant any decree in favor of the complainant. It is therefore incumbent upon the plaintiff, not only to allege, but to prove the want of authority. The burden of proof rests upon him, unless the case comes within the exception.

As to the second question: The negative alleged in the bill, like almost every negative allegation, admits not of convenient proof, and the defendants may well be presumed to have a knowledge of the
124 several transactions which preceded each of these conveyances, and possibly of whether the conditions in complainant's letter of attorney were or were not performed, but, with some hesitation, we have concluded that it cannot justly be said that the evidence of these transactions is more peculiarly within their control than that of the complainant.

To each of the several transactions which were consummated in these conveyances there were, so far as appears to us, but two privies, to wit, the attorney, Hall, and the grantee in the conveyance. This is as far as our knowledge, from the record, extends, nor are we warranted in assuming, that were others cognizant of the details, for as matter of law it cannot be said that the defendants were bound to secure the attendance of witnesses to their dealings with the complainant's agent, nor, having regard to the manner in which such affairs are ordinarily transacted, is it to be supposed that in point of fact they did so. The attorney, Hall, died before the filing of the bill, and the only living witness who can speak with directness as to either of the conveyances sought to be impeached is the grantee therein now impleaded before us. Now, by the law as it stood when this cause was brought to issue the defendants were not permitted to give testimony on their own behalf; and though the complainant might, if he had seen fit, have compelled them to speak, yet by requiring the defendant's answer to be given without oath, he has effectually prevented this, and, so it may be said, closed the only known avenue to the truth.

125 The complainant, it is true, was under no obligation to put himself at the mercy of his adversary; unquestionably he was at liberty to take the answer under oath, or without oath, according as he saw fit; but reference being had to the nature of the transaction to be investigated, and the habits and usages of men, we do not think the defendants can reasonably be said to have means of showing the truth of the matter superior to those within reach of the complainant, unless allowed their own oath, of which, as before suggested, the complainant has precluded them.

What is here said in the application of the general rule above stated, must not be regarded as a precedent which shall bind us in all cases. Generally, whoever alleges negative matter material to the relief prayed, must prove the negative; whether any particular case is within the exception above noticed, in which the burden of proof shifts to the oppo-

site party, will depend sometimes upon the form of the action, sometimes upon who are the parties, sometimes perhaps upon the forum in which the relief is sought, as is evidenced by the case of Kitchell vs. Burgum, (21 Ill., 40,) compared with Stevenson vs. Marony, (29 Ill., 535,) and in every instance the nature of the subject-matter, or transaction involved in the controversy, will enter into the question; so that no general rule can be prescribed. Each case must rest upon its own circumstances. (Great Western R. R. Co. vs. Bacon, 30 Ills., 353.) The present case seems to us not to come within the exception. The burden of proof was upon the complainant, and not having sustained his
126 allegations he must fail. It appears to be unnecessary, therefore, to go further and inquire whether the bill can be said to charge fraud in such sense as to raise the presumption of innocence, for the protection of the defendants, if the resolution of the second question had been otherwise.

The final decree of the district court given on the 18th day of November, A. D. 1870, will, therefore, be reversed, and the cause will be remanded to the district court with directions to that court, that as to the plaintiffs in error the bill be dismissed with costs.

The decree given against the defendant Hutchinson in the court below, not being complained of, will not be disturbed.

Hallett, C. J., did not participate in the decision of this case.

(Endorsed:) Macheboef et al. vs. Clements. Opinion. Filed March 5, 1873. David W. Crater, clerk. Recorded.

TERRITORY OF COLORADO,
Arapahoe County, ss:

I, David W. Crater, clerk of the supreme court of Colorado Territory, do hereby certify that the above and foregoing is a true and perfect transcript of all proceedings had and entered of record, and of
127 the papers filed in said supreme court in a certain cause lately therein pending, wherein Joseph P. Machebouef et al. were plaintiffs in error, and Alfred H. Clements was defendant in error, and the whole of the original, and that the stipulation between the said parties hereto annexed and on page 296, is the original stipulation filed in my office in the above-entitled cause on the 17th day of October, A. D. 1873.

In testimony whereof I have hereunto subscribed my name and affixed the seal of said supreme court, at Denver, this seventh day of November, A. D. 1873.

[SEAL.] DAVID W. CRATER,
Clerk.

Costs of transcript, 336 folios, 20c., 67.20; certificate & seal, 1.00—$68.20.
Paid in full, Nov. 10, 1873.
Paid by appellant.

In Supreme Court United States, October term, A. D. 1873.

ALFRED H. CLEMENTS, APPELLANT,
vs.
JOSEPH P. MACHEBOEUF ET AL., APPELLEES. } Appeal from supreme court, Colorado Territory.

128 And now comes the said appellant, and say that, in the records & proceedings of the said supreme court of Colorado Territory, there is manifest error, in this:

First. That the finding of said supreme court is contrary to the evidence in said cause.

Second. That the finding is against the law.

Third. That the said decree is for the defendants, when it should have been for the complainant. Wherefore, the complainant and appellant prays that said decree of said supreme court of said Territory may be reversed.

S. E. BROWN &
THOMAS G. PUTNAM,
Solicitors for Appellant.

129 (Indorsement on cover:) No. 347. Alfred H. Clements, appellant, vs. Joseph P. Macheboeuf, A. J. Williams, et al. Colorado Terr'y, sup. court. Filed 3d December, 1873.

Supreme Court of the United States.

OCTOBER TERM, A. D. 1875.

No. 120.

ALFRED H. CLEMENTS, Appellant,

vs.

JOSEPH P. MACHEBOEUF *et al.*, Appellees.

Appeal from the Supreme Court of the Territory of Colorado.

BRIEF AND ARGUMENT FOR APPELLANT.

J. W. DENVER,
Attorney for Appellant.

Judd & Detweiler, Printers.

Supreme Court of the United States.

OCTOBER TERM, A. D. 1875.

No. 120.

ALFRED H. CLEMENTS, Appellant,

vs.

JOSEPH P. MACHEBOEUF *et al.*, Appellees.

Appeal from the Supreme Court of the Territory of Colorado.

BRIEF AND ARGUMENT FOR APPELLANT.

This was a bill of equity in the district court of Arapahoe county and Territory of Colorado, to cancel certain deeds of conveyance executed, as it is said, by James Hall, as attorney-in-fact of the appellant under a certain power of attorney dated June 14, 1864. This power was limited in several respects, and was evidently given to enable Hall to settle with certain parties who had set up some sort of claim to certain lots of ground, the legal title to which was in the appellant, Clements, by virtue of a United States patent. There were four distinct limitations in the body of the power of attorney itself: first, the parties, to whom the deeds were to be made, must make application for the execution of the deeds within three months; secondly, file with James Hall, attorney-in-fact, an abstract of title, properly certified to by the county clerk, showing his right; thirdly, pay forty cents per lot and all expenses of making

the deeds; and, fourthly, the deeds were to contain "covenants of warranty." The following is a copy: (Rec., p. 15.)

Alfred H. Clements' power of atty. to James Hall.

Know all men by these presents, that I, Alfred H. Clements, of Central City, in the county of Gilpin, and Territory of Colorado, have made, constituted, and appointed, and by these presents do make, constitute, and appoint James Hall, of Denver City, my true and lawful attorney, for me, and in my name, place, and stead, to act upon the application and demand of any person or persons actually ow'ing, *and showing the same by abstracts of title properly certified to by the county clerk of Arapahoe County, C. T.*, to town lots in Denver City, situate on the south (½) half of northeast ¼, and east (½) half of southeast (¼) quarter of section (34) thirty-four, town. (3) three south, range (68) sixty-eight west, in aforesaid county & Territory, and upon the payment of forty cents (40 cts.) for each and every lot, and the further expenses of making, acknowledging, & delivering, and all other expenses of every name and nature, in accordance with the tenor & meaning of a certain bond executed by me to H. J. Brendlinger, mayor of Denver City, in trust for the citizens thereof, dated June, 1864; and upon fulfillments of the above requirements, and all others, as intended & mentioned in said bond aforesaid to make, execute, and deliver good and sufficient deed or deeds *with covenants of warranty to any person or persons that may apply for the same within three months* from date of said bond aforesaid, and in compliance of the same, giving and granting unto my said attorney full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in about the premises as fully to all intents and purposes as I might or could do if personally present, with full power of revocation; hereby ratifying and confirming all that my attorney or his substitute shall lawfully do or cause to be done by virtue thereof.

In witness whereof I have hereunto set my hand and seal this fourteenth day of June, A. D. 1864.

ALFRED H. CLEMENTS.

Sealed and delivered in presence of—

CHAS. R. FISH.

(Written across the face in red ink :)

DENVER CITY, *March* 9, 1866.

Know all men by these presents that I, Alfred H. Clements, do hereby cancel and annul the within power of attorney this the date above written.

A. H. CLEMENTS.

DR. WASHINGTON GRIZZEY.

[Internal revenue stamp of $100 attached.]

TERRITORY OF COLORADO,
County of Gilpin :

Be it known that on this 14th day of June, A. D. 1864, before me, the subscriber, personally came Alfred H. Clements, to me known as the same person described in, and who executed the foregoing instrument of writing, and acknowledged the execution thereof to be his free act and deed, for the uses and purposes therein mentioned.

Witness my hand and notarial seal this day and year above written.

[NOTARIAL SEAL.] CHAS. R. FISH,
Notary Public.

Filed for record June 23, A. D. 1864, at 10 o'clock.

EXHIBIT A.

TERRITORY OF COLORADO,
County of Arapahoe :

I, Webster D. Anthony, county clerk and ex-officio recorder of Arapahoe County, Colorado, do hereby certify that the above and foregoing is a true and correct copy of a certain instrument of writing, filed for record, and as recorded on the 23d day of June, A. D. 1864, at 10 o'clock a. m. F. and recorded in book B of Arapahoe County records, on page 232.

In witness whereof I hereby set my hand and official seal at Denver, this 6th day of February, A. D. 1869.

WEBSTER D. ANTHONY,
Clerk and Recorder.

[SEAL.]

[Five cent stamp.]

No deeds were given under this power of attorney until October 4th, 1864, the first to John H. Hutchison, nearly four months after the date of the power of attorney. The next was made December 3d, 1864, to Joseph P. Macheboeuf, and Hall continued to make deeds to various persons until the 3d of August, 1865. None of these deeds were made within three months, no abstract of title was furnished at any time, but all the deeds contained "covenants of warranty."

There was another power of attorney given by Clements to Hall, dated June 17th, 1864, authorizing him to *sell* his lands in Arapahoe county and to make "good and sufficient quit-claim deeds for the same," but no sales were made, and no "quit-claim deeds" were executed by Hall for any of the lands. The following is a copy of this second power of attorney: (Record, p. 16.)

EXHIBIT B.

Power of Attorney—A. H. Clements to James Hall.

[Filed for record March 12, 1867, at 3¾ o'clock p. m.]

Know all men by these presents that I, Alfred H. Clements, of Central City, in the county of Gilpin and Territory of Colorado, have made, constituted, and appointed, and by these presents do make, constitute, and appoint James Hall to be my true and lawful attorney, for me and in my name and for my sole use to enter into and take possession of all such lands, tenements, hereditaments and real estate whatever in the county of Arapahoe, Territory of Colorado, to or in which I am or may be in any way entitled or interested, and *to grant, bargain, and sell the same* or any part or parcel thereof, for such sum or price, and on such terms, as to him shall seem meet, and for me and in my name to make, execute, acknowledge, *and deliver good and sufficient quit-claim deeds for the same*, hereby giving and granting unto my said attorney full power and authority in the premises, to use all lawful means, in my name and for my sole benefit, for the purposes aforesaid and generally to do

and perform all such acts, matters, and things as my said attorney shall deem necessary or expedient for the completion of the authority hereby given, as fully as I might and could do if I were personally present; and, finally, hereby ratifying and confirming all the acts of my said attorney done by virtue of these presents.

In witness whereof I have hereunto set my hand and seal, this 17th day of June, in the year of our Lord one thousand eight hundred and sixty-four.

ALFRED H. CLEMENTS. [SEAL.]

Signed and sealed in presence of—
CHAS. R. FISH.

(Written across the page in red ink:)

This power of attorney is hereby revoked this 22d day of April, A. D. 1867.

ALFRED H. CLEMENTS. [SEAL.]

TERRITORY OF COLORADO,
Gilpin County, ss:

I, notary public in and for said county, do certify that Alfred H. Clements, whose signature appears to the within power of attorney and who is personally known to me to be the person whose name is subscribed to such power of attorney as having executed the same, appeared before me this day in person and did acknowledge the same to be his free act and deed.

Given under my hand and seal this day of June, A. D. 1864.

[SEAL.] CHAS. R. FISH,
Notary Public Col. Ter.

[$1.00 internal-revenue stamp attached.]

TERRITORY OF COLORADO,
County of Arapahoe, ss:

I, Webster D. Anthony, county clerk and ex-officio recorder of Arapahoe County, Colorado, do hereby certify, that the above and foregoing is a true and correct copy of a certain instrument of writing filed for record and as recorded on the 12th day of March, 1867, at 3¾ o'clock p. m., in book 10, on page 241.

In witness whereof I have hereunto set my hand and seal (official) at Denver, this 8th day of February, A. D. 1869.

[SEAL.] WEBSTER D. ANTHONY,
Clerk & Recorder.

[Five cent stamp.]

Nearly all the evidence is documentary, only one witness having been examined, and he on the part of Clements.

The district court found in favor of the complainant, Clements, entered a decree, November 18, 1870, in his favor, and ordering all the deeds to be cancelled. From this decision all the respondents (except Hutchinson, who let the case go against him by default,) appealed to the supreme court of the Territory, where, on the 5th day of March, 1873, the decision of the district court was reversed, except as to Hutchinson. From this the claimant appeals to this Court, and prays for a reversal of the decision of the supreme court of the Territory of Colorado, and that the decree of the district court of Arapahoe county of November 18, 1870, be affirmed.

ASSIGNMENT OF ERRORS.

1st. The appellant alleges that the supreme court of the Territory of Colorado erred in reversing the final decree of the district court of Arapahoe county.

2d. That said supreme court erred in assuming, without evidence, that everything had been done that was expressly required by the power of attorney of June 14, 1864.

3d. That said supreme court erred in relieving the respondents of the burthen of proof as to the good faith of the deeds they held, after a *prima facie* case had been made against them.

The power of attorney of June 14th, 1864, (p. 15 of the Record,) was executed by Clements in Gilpin county, then

a remote part of the Territory, and it was recorded in Arapahoe county June 23d, 1864, (p. 16 of Record.) As soon as Clements discovered what Hall had been doing he revoked the power, March 9th, 1866, (p. 15.)

Then, for the first time, the power of attorney of June 17th, 1864, makes its appearance. The only power under which Hall had ever pretended to act having been revoked, as above, on the 9th of March, 1866, this second one was put on record on the 12th of March, 1867, (Record, p. 16,) nearly three years after it was made and executed and more than a year after the first power of attorney had been revoked.

This second power was revoked by Clements on the 22d of April, 1867, (p. 16,) which was probably as soon as he could get the information, in Gilpin county, of its being filed for record in Arapahoe county, and get down there to look after it.

From the above facts it must be evident that the second power of attorney had nothing to do with the deeds in controversy, and that it was put on record merely as a blind. The two powers are totally different in the authority conferred on the agent. The first authorized deeds with "covenants of warranty" to be given on certain conditions expressed therein; the second authorized the attorney-in-fact to *sell* and give quit-claim deeds. All the deeds given contained the "covenants of warranty," but none of the land was sold, and no "quit-claim deeds" were given. The first power of attorney contemplated some sort of equitable interest as existing somewhere, which was to be established "*by abstracts of title properly certified to by the county clerk of Arapahoe county*," and if the party establishing such right should apply for a deed "*within three months*," he was to have one "*with covenants of warranty*," on the payment of a merely nominal consideration. The second power of attorney merely authorized Hall to "*sell*" "*for such sum or price, and on such terms, as to him shall seem meet*," and to give "quit-

claim deeds for the same." There were no other conditions, but this instrument was not placed on record for nearly two years after the date of the last deed made by Hall, and it is not at all probable that the parties would have accepted deeds under a power of attorney not of record. Therefore, all the deeds must have been made with reference to the first power of attorney, and every one of them exceeds its terms and limitations. Indeed, if the deeds given be examined with reference to their form and the facts as shown, it will be seen that the attorney-in-fact was not authorized by either of the powers of attorney, or by both of them combined, to act as he did.

And this the respondents were bound to know. They knew they were dealing with an agent, and that his authority was to be strictly construed. If, therefore, they accepted any departure from the strict letter of the authority given, they did so at their peril.

The appellant, Clements, charges that Hall, the attorney-in-fact, did not act in good faith in the exercise of the authority conferred on him by the power of attorney, but that he colluded with the present appellees to defraud him (Clements) out of his property; and that the appellees, well knowing the premises, wrongfully obtained the deeds, without doing anything to entitle them to the benefits intended by the power of attorney of June 14, 1864. That they have made no effort to prove that they ever furnished to Hall an abstract of title within three months from the date of the power of attorney, or even that they had applied within that time for the execution of the power by Hall. All these transactions were in fraud of the rights of Clements.

By appellees it is claimed that there is nothing to indicate in the evidence, &c., under which power the attorney acted in executing the deeds for the cancellation of which the bill is filed, and that if the deeds were executed under the last power even with the covenants of warranty, that they are,

nevertheless, valid *pro tanto*. All of the deeds complained against contain covenants of warranty. (See copy of deed to Machèboeuf, pp. 13 and 14.) Not one of them are quit-claims. To a reasonable mind seeking for truth, we think this, at least, *prima facie* evidence that they were made in pursuance of the power authorizing the use of these covenants. Here is no mistake and no defective execution of the power. If there had been, courts of equity could decree relief, but not in this case. (See section 115, Story Eq. Ju. Hunt *vs.* Rousmaniere's Adm'rs, 1st Peters, 1–17.) This was a mere naked power unaccompanied with any interest. It must be construed according to the manifest intent of Clements at the date of its execution.

Shipman *vs.* Horton, 17 Conn. R., 486.
Insley *vs.* Huntington, 20 Conn. R., 169.
Williams *vs.* Payton's Lessee, 4 Wheat. R., 77.
Morell *vs.* Cane, 22 How., U. S., 75.
Blagg *vs.* Miles, 1 Lt. R., 426.
Wilson *vs.* Troup, 7 John. C. R., 197.

If executed after the time limited in the power, the deed is void.

M'Murty *vs.* Frank, 5 Mon., 39.
Tolman *vs.* Emerson, 4 Pick, 160.
Hughes *vs.* Holliday, 3 Greene, (Iowa,) 32.
Dehart *vs.* Wilson, 6 Mon., 581.
Story on Agency, sec. 126, note 3.
Smith Mer. Law, 57 to 62.
Fern *vs.* Harrison, 3 D. and E., 757.
Anderson *vs.* Newland, 7 Conn., 354.
Thompson *vs.* Stewart, 3 Conn., 171.
Daly *vs.* James, 8 Wheat., 495.
Legee *vs.* Thomas, 3 Bl. C. C., 12.

In the opinion of the supreme court of Colorado, which is made a part of the record in this Court, (Record, pp. 54

to 60, inclusive,) a long argument is indulged in to prove that the seal of a corporation being affixed to a deed is presumed to have been so affixed by authority, and that when such a corporation is formed for the purpose of acquiring and holding real and personal estate, &c., and is found in possession of such estate, the presumption at once arises that it has been properly acquired. This is all very learned, no doubt, but we have sought, in vain, for the connection between it and the question under consideration. The question here is not the presumption arising from affixing the seal of a body corporate to a deed, but the authority of an attorney in fact to exceed his delegated powers. If the evidence and pleadings showed only the fact that a deed with covenants of warranty had been executed under a power authorizing the execution of quit-claim deed, the conveyance would be good *pro tanto*. Here two powers are disclosed manifestly for different purposes, and from the circumstances clearly indicate that the resort to the last power to support those conveyances was a result of a consultation with counsel "learned in the law."

The first power of attorney authorized Hall as attorney-in-fact, to execute deeds to certain persons under certain conditions aforesaid with covenants of warranty for the reason that they claimed to be the owners, not as purchasers; the second power authorized Hall to *sell* lots and convey by quit-claim deeds. Messrs. Macheboeuf and his co-defendants don't pretend to claim that they ever purchased any of these lots. This second power of attorney was recorded March 12, 1867, about two years after the deeds were executed. This dodge was a dating back to cover accidents—an after consideration. The several defendants in the district court then answer that under one or the other of these powers these deeds were made; they are uncertain as to which, and gravely ask the Court to determine. There is not one word of evidence offered by any of the appellees as as to any of their allegations. They allege the performance

of the conditions in the first power, but they fail to prove them. They allege the execution of a certain bond by Alfred H. Clements to H. J. Brendlinger, mayor of the city, and we dispute the allegation. They allege the filing of abstracts and payment of forty cents per lot, but fail in their proof. The deed of Macheboeuf is executed on the third day of December, A. D. 1864, for the consideration of twelve dollars, just forty cents per lot for the number of lots conveyed in pursuance of the first power of attorney. In this we find an argument in favor of our position. Macheboeuf disclaims ownership to two lots in the block, so that thirty lots at forty cents each would make $12.

The first power of attorney was recorded June 23, 1864, and there is no evidence that any of the appellees had any knowledge of the existence of the second power until long after all the deeds were made.

The bond referred to in appellees' answers was never executed by complainant, or by his authority. The only witness in the case proves clearly it was not. But suppose it had been, what effect could it have in this case? It was void: first, because it was in violation of the act of Congress of the fourth of September, 1841, (Brightly Dig., vol. 1, pp. 472, 473, &c.;) and, secondly, because the mayor of the city of Denver had no right to become the self constituted trustee of others. It is claimed by the appellees that inasmuch as Hall *might have* executed these deeds within three months after June 14, 1864, *but did not*, that, therefore, he might do so at any time thereafter. We think this argument is fallacious. They appear to admit that it was necessary that the claim should have been made and the abstract filed with Hall within three months, but they fail to show that any abstracts were ever filed, or any money paid either within the ninety days, or thereafter.

The supreme court of Colorado attempts to show that the proof of the conditions precedent, expressed in the letter of attorney to Hall, was on the complainant in the district court,

the appellant here. In answer to this we say that every prerequisite to the making of the deed *must be shown by the party claiming title under that deed.*

Williams *vs.* Peyton, 4 Wheaton, 77.
Bradish *vs.* Gibbs, 3 J. C. R., 523.

The power must be executed in pursuance of the power.
Morrill *vs.* Cone, 22 H. R., 95.

This power was executed after it had expired by its own limitation.

Daly's Lessee *vs.* James, 8 Wheaton, 495.

In his opinion Justice Wells announces the old doctrine, too well establised by authority to be now questioned, that "every expressed power bears with it, by implication, every other power necessary to its exercise." But this principle must be taken with the qualification that this *exercise* must be taken to mean an *exercise* limited by the terms of the power itself, and by its purposes when those purposes are clearly expressed. Here no *implication* is necessary. The power is clear, and nothing is left to conjecture or implication. The deeds were to be executed within ninety days upon certain plainly expressed conditions, which conditions are clearly expressed in the power. The agent was not authorized to bind the principal beyond his letter of credit, and it is folly to attempt to cure, not a defective execution of the power, but an unauthorized conveyance of these lots by a resort to this after-discovered and recorded power of attorney, which is clearly shown to have been executed for an entirely different purpose.

See Gee *vs.* Boltin, 17 Wis. R., 604.

Unauthorized acts of attorney, under an express power, which are not within the letter or scope of that power, are void.

Parole evidence cannot be received of any intention to confer the power not expressly given.

Man *vs.* Given, 23 Maine R., 55.

The supreme court of Colorado showed singular ignorance of the law when it announced that the defendants were not competent witnesses in the cause. It is clear that the court overlooked the act of Congress of the 2d of July, 1864, amended by the act of March 3, 1865, and commented on by this court in Greene *vs.* United States, 9 Wallace, 655. These acts were applicable to the courts of Colorado.

If the deeds had been executed within the time limited in the power and had been complained of for some extrinsic cause, then the assumption of the Supreme Court that the burden of proving a negative was on the complainant in the District Court might have seemed to have some force. But, as we claim, the deeds appearing by their dates to have been executed after the power had expired by its own limitation, and the appellees claiming to hold the property by virtue of some excuse for the non-execution of the power during its life, the burden of proof is clearly on that party who seeks thus to hold the estate. If they performed the conditions precedent required by the power to be performed, the evidence was peculiarly within their reach. If the abstracts of title had been made, by the recorder, why could appellees not prove the fact? If the money had been paid could not that fact be shown? If appellees ever had any title to these lots was not that fact susceptible of proof? We think these questions can only be answered in the affirmative!

The power which authorized conveyances with covenants of warranty was dated June 14, 1864, and was limited in its duration to three months, and contained the conditions precedent to the execution of any deed requiring the claimant to make his application for conveyance within three months, file abstracts of title and pay the attorney the sum of forty

cents per lot for each lot to be conveyed. These conditions were not complied with, at least there is no evidence of such compliance on the part of any of the appellees and the *onus* was on them.

In Kent's Com. Vol. 4, 332, it is said that if the grantor shall have directed any formalities to be observed, &c., not necessary to carry the estate, their observance is not necessary to the valid execution of the power, and that those useless formalities are excused and may be disregarded. But the author thus adds: "*In all other respects* the intention of the grantor of a power, as to the MODE, TIME and CONDITIONS of its execution must be observed."

The intention of the donor must be the criterion of the proper execution of the power.

Bingham's Appeal, 64 Penn. R.

For all these causes we think the decree of the Supreme Court of the Territory of Colorado cannot be sustained.

J. W. DENVER,
Attorney for Appellant.

Supreme Court of the United States.

OCTOBER TERM, A. D. 1875.

No. 120.

ALFRED H. CLEMENT,

vs.

JOSEPH P. MACHEBOEUF *et als.*

BRIEF IN REPLY.

J. W. DENVER,
Solicitor for Appellants.

Judd & Detweiler, Printers.

Supreme Court of the United States.

OCTOBER TERM, A. D. 1875.

No. 120.

ALFRED H. CLEMENTS

vs.

JOSEPH P. MACHEBOEUF *et als.*

BRIEF IN REPLY.

1. Has a court of chancery jurisdiction over this case?

"And, with the exception of wills, as above stated, courts of equity may be said to possess a general, perhaps a universal, concurrent jurisdiction with courts of law in cases of fraud cognizable in the latter, and exclusive jurisdiction in cases of fraud beyond the reach of the courts of law."

Story's Equity Jurisprudenee, sec. 184, last clause.

"This Court has an undoubted jurisdiction to relieve against every species of fraud."

Lord Hardwicke, in Chesterfield *vs.* Janssen, 2 Ves., 155.

See also sec. 187, Story's Equity Jurisprudence.

2. *As to multifariousness.* The bill is not multifarious; but even if it was, it is now too late. That objection should have been raised by special demurrer, and cannot be made on the hearing. The answers to the bill, and the stipulations on pages 1, 2, and 48 of the Record, in which all joined, is an estoppel to the raising of that question now.

"In Kensington *vs.* White, 3 Price, 164, a bill was filed

by seventy-two underwriters to restrain several actions on different policies effected on different ships. The defendants, indeed, had a common interest in all, because they were the owners of the ships and plaintiffs in all the actions; but here were seventy-two individuals, all not only liable to separate actions, but actually defendants in separate actions, united together against the parties, who were plaintiffs in all the actions, for the purpose of obtaining by one bill a discovery in aid of the defence against the actions; and that was held in the court of exchequer not to be multifarious."

Story's Equity, sec. 278*a*, at close of note 1, and sec. 537.

"A bill is not to be treated as multifarious because it joins two good causes of complaint, growing out of the same transaction, where all the defendants are interested in the same claim of right, and where the relief asked for in relation to each is of the same general character."

Story's Eq. Pl., secs. 264, 530, 531.

Varick *vs.* Smith, 5 Paige, 160.

"No case shows that the Court will not permit a suit to be instituted in which, their being a common interest in the plaintiffs, and the defendants representing and being interested in all the different questions raised in the Record, the suit had a common object."

Salvidge *vs.* Hyde, Jacob, 141.

"Where there are a common liability in the defendants, and a common interest in the plaintiffs, even different grounds of property may be united in one and the same record."

Story's Eq. Pl., sec. 278*a*, note 1, secs. 533, 534.

But it is unnecessary to pursue the authorities any further on this subject. As above stated, it is now too late for the defendants to avail themselves of this objection, even if it did lie at the commencement of the suit; which is denied.

3. The plaintiff did not part with his interest, the subject-matter of this suit.

Deposition of C. B. Clements, p. 43.

4. The execution of the power of attorney was not within the limitations of the power conferred, as will be seen by an examination of the instrument itself and the deeds made by Hall. If the first power of attorney is relied on, none of the conditions of the power were observed, except to make deeds of general warranty. If the second power of attorney is relied on, the attorney in fact exceeded his powers by making deeds of general warranty.

Powers of attorney are strictly construed.

6 Cush., Mass., 117.

5 Wheaton, 326.

"Where, however, the whole authority is conferred by a written instrument, its nature and extent must be ascertained from the instrument itself, and cannot be enlarged by parol evidence."

Bovier's Law Dic., Title, Agent, extent of authority.

"Delegated powers must be strictly pursued."

Welch *vs.* Parish, 1 Hill, S. C., 155.

U. S. Digest, vol. 3, p. 234.

"A special authority must be strictly pursued, and an act substantially varying from it is void."

Batty *vs.* Carswell, 2 John., 48.

Allen *vs.* Ogden, Wash. C. C., 174.

Nixon *vs.* Hyserott, 5 John., 58.

5. Did the power of attorney create a trust estate? By no means. It had none of the elements of a *trust.* It was, as it purported to be, a mere power of attorney, authorizing James Hall to do a specific thing on certain conditions named. There never was a deed of trust executed by Alfred H. Clements to the Mayor of Denver city, or to James Hall, in relation to this property, nor was it ever so pretended. The power of attorney of June 14, 1864, (Record, p. 15,) refers to *a bond*, which, being lost, the proof, on page 42, shows

was made by C. B. Clements, in which he undertook that his son, after the entry of the land, should "deed back to lot-holders or claimants on proper abstracts," &c. Here was no trust created of any kind whatever. It was, at most, a personal obligation. The reference to the bond in the power of attorney is merely descriptive. Even had it been a trust deed, or its equivalent, there is no proof that H. J. Brenlinger, the mayor of Denver city, ever accepted the trust. It is not shown that he ever performed any single act in connection with it. Nothing, therefore, is to be presumed on that score. All the deeds were made by Hall, and the defendants must be strictly held to the terms of the power of attorney under which he pretended to act; which was recorded June 23, 1864, and well known to them.

The burden of proof was on the defendants. The bill alleges that on May 11th, 1864, the plaintiff was "the owner, in fee simple," of the lands in controversy. (P. 3.)

This is admitted by all the defendants in their answers and amended answers. (Pp. 12, 17, 20, 22, 30 and 33.)

The plaintiff refers to the deeds made by Hall to the defendants at various times therein stated, and charges that these deeds were made without any authority whatever from the complainant, but that they were obtained by the respondents through collusion and fraud with Hall. The defendants admit that Hall did execute the deeds as alleged in the bill; then assert that Hall executed them under authority "and by virtue of the several powers of attorney or letters of attorney" (p. 12) thereto attached, marked exhibits "A" and "B," pages 15, 16 and 17; and in their amended answers (pp. 31, 34 and 35) they allege that James Hall did execute to them the deeds upon the performance and fulfillment of certain terms and conditions in said power of attorney (Exhibit A) set forth and prescribed. To this the plaintiff replies, (p. 39,) denying the sufficiency of the answers, and putting the defendants to the proof. This made up the issues. The defendants produce no proof whatever, but

rest their defense on the sufficiency of the power of attorney marked "Exhibit A." Beyond their bare assertion there is no proof that the "terms and conditions" contained in said power of attorney were ever complied with, while all such proofs, if any such ever existed, were peculiarly in their possession. That they produced none is presumptive evidence that they had none; and, therefore, when it is remembered that none of them would testify under oath, as they might have done, it must be assumed that they have not fulfilled the "terms and conditions" prescribed.

"An answer which, while admitting or denying the facts in a bill, sets up other facts in defense or avoidance, is not evidence of the latter facts unless they are a direct and proper reply to an express charge or interrogatory; or unless the transaction is a continuous one, and the matters of charge and discharge occur at the same time."

Beech *vs.* Haynes, 1 Tenn. C. R., 569.

"The rule, it will be noted, which considers an admission as binding, and as throwing upon the defendant the burden of proving the matter of avoidance, applies only to admissions which are responsive to or go to support the charges of the bill."

Id., 571.

On the face of the record the allegations and charges contained in the bill are established. There being no proof that defendants complied with the "terms and conditions" contained in the power of attorney, (Exhibit A,) through which it must be admitted they derived the deeds, collusion with Hall and fraud must be presumed. And this presumption is greatly strengthened, if it is not rendered conclusive, when, more than two years afterwards, they put on record a second power of attorney, (Exhibit B,) which was for an entirely different purpose, and seek by that means to conceal their short-comings in regard to the first. This last act must, most clearly, be regarded as an admission that they

had not complied with the "terms and conditions" of the first power of attorney, for if they had done so where was the necessity for invoking the aid of the second? This act of the defendants, of itself, unquestionably establishes the fraud as charged in the bill, and entitles the plaintiff to the relief prayed for. The filing of this second power of attorney on March 12th, 1867, was undoubtedly the act of all the parties defendants, for they all refer to it in their answers and set it up as part of their defense. It forms, too, a connecting link, and shows that they had all combined together to cheat and defraud the plaintiff, A. H. Clements, out of his property. A court of chancery will always grant relief against fraud, and as expeditiously as possible.

The defence set up is inconsistent with the facts. The first power of attorney required the fulfillment of certain "terms and conditions," and when this should be done the attorney-in-fact was authorized to give deeds with "covenants of warranty." The second authorized a *sale* and the execution of "quit-claim" deeds. All the deeds contain covenants of warranty, but no fulfillment of the conditions are shown. No *sale* is proven, and no "quit-claim deeds" are produced.

The court below erred in not compelling the defendants to elect as to which power of attorney they would rely on for their defence. They had no right to rely upon both, for, as above shown, they were inconsistent with each other.

"A party cannot occupy inconsistent positions, and when he has an election between several inconsistent courses, he will be confined to that which he first adopts."

Bigelow on Estoppel, 578.

The election of either one of these instruments by the respondents would have ruined their defence, and the holding on to both cannot avail them in covering up the fraudulent transactions.

J. W. DENVER,
Solicitor for Appellants.

Supreme Court of the United States.

OCTOBER TERM, A. D. 1875.

No. 120

ALFRED H. CLEMENTS

vs.

JOSEPH H. MACHEBOEUF ET AL.

BRIEF OF COUNSEL FOR APPELLEE.

R. T. MERRICK,
For Appellee.

Judd & Detweiler, Printers.

Supreme Court of the United States.

OCTOBER TERM, A. D. 1875.

No. 120.

ALFRED H. CLEMENTS

vs.

JOSEPH H. MACHEBOEUF ET AL.

BRIEF OF COUNSEL FOR APPELLEE.

The bill alleges that complainant, Alfred H. Clements, was, on the 11th day of May, 1864, the owner in fee simple of certain lots and blocks in the city of Denver, Colorado Territory; that one James Hall, since deceased, pretending to act as the attorney in fact in behalf of complainant, conveyed certain particularly described portions of said premises to the said several defendants, respectively, by twelve separate and distinct deeds, executed at different dates, the first date in order of time being the 3d of December, 1864. The bill then charges that "said deeds of conveyance were made by the said James Hall *without any authority whatever*, of which the said several grantees had full notice, but combined with the said James Hall to cheat, rob, and defraud complainant."

This is the only allegation or charge in the bill impeaching the deeds in question, and no ground of fraud, or facts constituting fraud, are averred, except the absence "of any authority whatever" in said Hall to make said conveyances as the attorney of the said complainant.

The bill waives an answer under oath, and prays that the said several deeds may be "canceled, and the lots restored to the complainant wholly discharged from said conveyance."

The defendants, severally, demurred to the bill.

The demurrers were overruled by the court, and thereupon defendants filed their answers, each admitting that he held certain described portions of said premises under deeds of conveyance from the complainant, executed by James Hall as his attorney in fact—denying all combination, wrong, or fraud—averring that the property in question had been conveyed for a valuable consideration, and setting forth as exhibits two powers of attorney from complainant to said Hall: the one bearing date the 14th of June, 1864, and the other bearing date the 17th of June, 1864.

Record, pp. 15 and 16.

The complainant excepted to the sufficiency of the several answers of defendants on grounds specifically set forth.

Record, pp. 25 and 26.

Four of said exceptions were sustained, to wit:

First. "For that said defendant sets out in his answer one "power of attorney marked 'Exhibit A,' which shows in "itself that the power had expired before the deed sought "to be canceled was executed."

Second. "That said defendant does not show that terms "and stipulations made by said complainant, or any of them, "were complied with by the defendant."

Third. "That said defendant does not show in and by his "said answer that he had any legal or equitable right to "demand or receive from said Hall, as attorney in fact of "complainant, any deed of conveyance for the lots described "in said deed."

Fourth. "That said defendant also appends to and makes "a part of his answer a copy of another power of attorney, "marked 'B,' and the original deed sought to be canceled "does not show under which of said powers said deed was "executed."

It is difficult to perceive on what grounds the Court could have sustained these exceptions, as they relate to instruments not referred to in complainant's bill, and call for a discovery in regard to transactions about which the bill is silent. If at the time his bill was filed the complainant had not anticipated the introduction of these instruments as part of the answer of defendants, he should, according to the rules of pleading, have amended his bill when they came in; and if he designed to attack them, or to assail the regularity of any proceeding taken under them, should have set forth in such amendment the grounds of his attack and the particulars in which the supposed irregularity consisted.

Very *vs.* Levy, 13 H., 362.

The defendants, under the ruling of the Court on the exceptions, filed amended answers.

Each of the amended answers sets out that the defendant within three months from the date of the bond referred to in the first of said powers of attorney to Hall, made application to him for a deed for the lots conveyed to defendant; that defendant complied with and fulfilled all and every the terms and conditions of the said power of attorney and of the bond therein mentioned, and that the said James Hall *acted upon defendants' application* and demand pursuant to the powers of said attorney, and *pronounced and decided in favor of the same*; and that the said Hall, under and by virtue of the powers of attorney, dated respectively the 14th and 17th of June, 1864, conveyed the premises in question to defendant for a valuable consideration.

A general replication was filed.

The only testimony taken was that of Caleb B. Clements. (Record, p. 42.)

The district court decreed that the several conveyances therein set forth were fraudulent and void, "having been executed and delivered without lawful authority, and without consideration."

On appeal to the supreme court of the Territory, this decision was reversed, and the cause remanded, with directions to dismiss the bill of complaint.

The three errors assigned by the appellants are the same in substance, viz: that in the case, as hereinbefore stated, the deeds to the defendants should be *presumed* invalid, and and that the burden of proof was on them to show that Hall, the attorney, had complied strictly with all the directions contained in the powers referred to before executing said deeds.

I.

It would seem from the Record that at the date of the powers of attorney from Clements to Hall various parties were claiming to be the equitable owners of certain town lots in the tract of land described in the complainant's bill, or to have some interest therein by possession, or as derived in some way from Denver City Town Company. That complainant proposed to acquire title to said tract of land by locating thereon a certain bounty land warrant; but the fact that the lands were in part occupied by citizens of Denver, and possibly had been laid out as the town site of Denver, presented a difficulty in the way of accomplishing this purpose, and, to avoid the interposition of any objection, he agreed with H. J. Bredlinger, the mayor of Denver, acting on behalf of said interested parties, that if permitted to locate his warrant as aforesaid without opposition, he would convey an absolute title to all persons who might claim an equitable interest to lots within the said tract, and who should give satisfactory evidence of such claim, and pay

therefor the sum of forty cents a lot. That, in accordance with this agreement, he executed the bond to Bredlinger, referred to in the power of attorney, covenanting to convey as above indicated, and thereupon executed to James Hall the power of attorney of 14th of June, 1864, authorizing him as attorney-in-fact and trustee to carry out the covenants of said bond.

It is denied in the brief of the counsel for appellant that any such bond was ever executed by the complainant, and the evidence of Caleb B. Clements is referred to as sustaining the denial; but counsel has overlooked the fact that the execution of the bond is admitted by the complainant himself in the power of attorney to Hall, where it is referred to as containing the directions by which the attorney was to be governed in the execution of his trust. It is there stated, in connection with the duties and trusts of the attorney, that the same are "*in accordance with the tenor and meaning of a certain bond executed to me to H. J. Bredlinger, Mayor of Denver City, in trust for the citizens thereof, dated June*, 1864."

It is agreed that this power of attorney was duly signed by complainant. (Record, p. 1).

It is apparent, from the power of attorney and the recitals therein:

1st. That the bond was, in fact, executed by complainant.

2d. That the bond was executed to Bredlinger, in trust for the citizens of Denver.

3d. That the beneficial interest to which the trust had reference was a beneficial interest in the premises in question.

4th. That the power of attorney was given to Hall in order that he might "act upon the application and demand" of those claiming to be beneficiaries.

5th. That having so acted, and ascertained and determined the extent of any applicant's interest in the premises, he should thereupon perform in his favor, the covenant of the bond, by making to him a conveyanee of such portion of the premises as he might be entitled to receive, on the payment by him of forty cents a lot, and expenses of conveyancing.

It is claimed by the appellant's counsel:

1st. That the bond was void, because in violation of an act of Congress.

2d. That the Mayor of Denver had no right to become the self-constituted trustee of others.

This position cannot be maintained, but if it could and the bond were void, as alleged, the complainant having realized, according to its terms, cannot refuse to recognize the interests of those associated in the enterprise.

Brooks *vs.* Martin, 2 Wallace, 70.

And if the mayor of Denver thought proper to constitute himself trustee of others, it is they, and *they alone*, who can complain of his action. If the beneficiaries elect to accept the benefit of the trust, the party contracting with the trustee cannot, after such election and acceptance, object that the trustee was not empowered by his beneficiaries to assume that relation.

It is therefore submitted that the power vested in Hall by the instrument in question was not a mere power discretionary with the donee, and liable to be revoked by the donor at pleasure, but it was a power, coupled with a *trust*, conferred for a valuable consideration, irrevocable by the donor, and imperative upon the donee, who became, under the power, both trustee and attorney, clothed with authority, in the first place, to determine, in the exercise of his judgment,

who were the parties having the interests recognized by the bond referred to; and, in the second place, to convey to such parties according to his conclusions in the premises.

In construing powers, the end and design of the parties and the substantial rather than the literal execution of the power is to govern.

Paley on Agency, 192, note (3) and the authorities there cited.
1 Perry on Trusts, § 248.
Very *vs.* Levy, 13 H., 359.

II.

The limitation of time in the power of attorney applied only to the period within which parties claiming to be entitled to deeds, under the covenants of the bond to Bredlinger, should make their applications to the attorney, and not to the period within which the attorney should execute the deeds. His authority to make conveyances was without limit as to time, and the execution of the power being therefore apparently within the limitations of the letter of attorney, a presumption arises in favor of the *bona fide* execution of the trust reposed in the attorney.

Very *vs.* Levy, 13 H., 359.
Morrill *vs.* Cone *et al.*, 22 H., 82.
Rail *vs.* McKernan, 21 Ind., 421.
Wilburn *vs.* Spofford, 4 Snead, 704.

III.

The case of Morrill *vs.* Cone, above referred to, establishes the proposition that the recital of the consideration in the deed executed by the attorney, is *prima facie* evidence that such consideration was paid by the grantee; and as the authority to convey did not arise until the attorney had considered, and determined upon, the right of the party making application for a conveyance, the execution of a conveyance

and receipt by the attorney of the consideration therefor, raises the presumption that the grantee had applied for such conveyance, and that the attorney had considered and "acted upon" such application, in accordance with the directions of the letter of attorney; for the reason, that to have proceeded otherwise would have been unlawful and fraudulent.

Chatauque County Bank *vs.* Risley, 19 N. Y., 381.
Little *vs.* Herndon, 10 Wall., 31.
Nelson *vs.* Eaton, 26 N. Y., 415.
Wilburn *vs.* Spofford, 4 Snead, 704.
1 Greenleaf on Evidence, § 80.
Taylor on Evidence, § 339.

In the case of the Bank of the United States *vs.* Dandridge, 12 Wheat., pp. 69, 70, Mr. Justice Story, delivering the opinion of the court, says: "By the "general rules of evidence, presumptions are continually "made in cases of private persons, of acts even of the most "solemn nature, when those acts are the natural results or "necessary accompaniment of other circumstances. In aid "of this salutary principle, the law itself, for the purpose of "strengthening the infirmity of evidence and upholding "transactions intimately connected with the public peace "and the security of private property indulges its own pre-"sumptions. *It presumes that every man in his private and "official character does his duty until the contrary is proved;* * "* * it will presume that all things are rightly done, "unless the circumstances of the case overturn this pre-"sumption, according to the maxim *omnia presumunter rite "et solemniter esse acta donec probetur in contrarium.* * * * "The same presumptions are, we think, applicable to cor-"porations. Persons acting publicly as officers are to be "presumed rightfully in office; acts done by the corporation "which *pre-suppose the existence of other acts to make them legally "operative are presumptive proofs of the latter.*"

V.

The bill of complaint was filed against twelve or more separate and distinct defendants, to set aside twelve separate and distinct deeds, having no connection with each other whatever, except in so far as it was alleged that they were made "by one James Hall, pretending to act as the attorney-in-fact of complainant." But, after this allegation, the bill charges, as the ground for vacating said deeds that they "*were made by the said James Hall without any authority whatever*," and makes no reference to any power of attorney under which he may have acted or pretended to act. If Hall was without any authority whatever in the premises, the plaintiff could not join the said several grantees in one suit, and the bill should have been dismissed because multifarious.

Oliver *vs.* Piatt, 3 H., 333.

The answers of defendants cannot cure this defect in the bill, for the objection can be tested *only by the structure of the bill itself.*

Nelson *vs.* Hill, 5 H., 127.

The objection should be made before answer, and was so made by demurrer in this case. The demurrer being overruled, the defendant answered—and if the demurrer is regarded as waived by the answer, the objection of multifariousness is one of which the court may take notice at the hearing.

Oliver *vs.* Piatt, 3 H., 333.

But if the answers could cure the defect suggested in the bill by replying that said defendants held under a common muniment of title, they do not so reply in this case, but on the contrary, set up two distinct powers of attorney authorizing said Hall to execute conveyances. Some of the conveyences may have been executed under one, and some may

have been executed under the other, and some may have been executed under both.

VI.

The bill seeks relief upon the ground that Hall had "*no authority whatever*" to make the deeds in question.

If the attorney was entirely without authority to execute the conveyances they were void, and could cast no cloud upon complainant's title, nor impair any remedies at law provided for the protection of his property or the redress of trespasses upon it; the court of equity, therefore, on the theory upon which complainant sought relief, had no jurisdiction in the case.

Ewing *vs.* The City of Chicago, 5 Wall., 418.

On the other hand, if the attorney was clothed with authority to execute the deeds, but failed to act according to its directions, the bill should have attached the execution of the power, and alleged wherein there had been a departure from its requirements. In such a case equity might, upon sufficient proof, have given the complainant relief against a deed conceded to be *prima facie* valid.

VII.

Pending the litigation, and before the case came on to be heard, the complainant disposed of his interest in the property in question by deed of conveyance to Caleb B. Clements, who is not made a party to this proceeding.

Record, p. 43.

R. T. MERRICK,
For Appellee.